(d) Person described

A person is described in this subsection if such person is described in section 4958(f)(7) with respect to a donor advised fund.

(Added Pub. L. 109–280, title XII, §1231(a), Aug. 17, 2006, 120 Stat. 1097.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Aug. 17, 2006, see section 1231(c) of Pub. L. 109–280, set out as an Effective Date of 2006 Amendment note under section 4963 of this title.

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

AMENDMENTS

2010—Pub. L. 111–148, title I, §1513(b), title IX, §9001(b), Mar. 23, 2010, 124 Stat. 256, 853, added items 4980H and 4980I.

2003—Pub. L. 108–173, title XII, §1201(d)(4)(B), Dec. 8, 2003, 117 Stat. 2478, added item 4980G.

2002—Pub. L. 107–147, title IV, §417(17)(B), Mar. 9, 2002, 116 Stat. 56, substituted ''Archer MSA contributions'' for ''medical savings account contributions'' in item 4980E.

2001—Pub. L. 107–16, title VI, §659(a)(2), June 7, 2001, 115 Stat. 139, added item 4980F.

1998—Pub. L. 105–206, title VI, §6023(18)(B), July 22, 1998, 112 Stat. 825, substituted ''certain tax-favored accounts and annuities'' for ''individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities'' in item 4973.

1996—Pub. L. 104–191, title III, §§301(c)(4)(B), 326(b), title IV, §402(b), Aug. 21, 1996, 110 Stat. 2050, 2066, 2087, added items 4980C, 4980D, and 4980E.

Pub. L. 104–188, title I, §1602(b)(5)(B), Aug. 20, 1996, 110 Stat. 1834, struck out item 4978B ''Tax on disposition of employer securities to which section 133 applied''.

1989—Pub. L. 101–239, title VII, §§7301(d)(2), 7304(a)(2)(C)(iii), Dec. 19, 1989, 103 Stat. 2348, 2353, struck out item 4978A ''Tax on certain dispositions of employer securities to which section 2057 applied'' and added item 4978B.

1988—Pub. L. 100–647, title I, §1011A(g)(1)(B), title III, §3011(c), Nov. 10, 1988, 102 Stat. 3479, 3625, redesignated item 4981A as 4980A and added item 4980B.

1987—Pub. L. 100–203, title X, §10413(b)(2), Dec. 22, 1987, 101 Stat. 1330–438, added item 4978A.

1986—Pub. L. 99–514, title XI, §§1117(b)(2), 1121(a)(2), 1131(c)(2), 1132(b), 1133(b), title XVIII, §§1854(a)(9)(C), 1899A(75), Oct. 22, 1986, 100 Stat. 2462, 2465, 2478, 2480, 2483, 2877, 2963, added item 4972, inserted ''section'' in item 4973, substituted ''Excise tax on certain accumulations in qualified retirement plans'' for ''Tax on certain accumulations in individual retirement accounts'' in item 4974, struck out ''and allocations'' after ''certain dispositions'' in item 4978, and added items 4979, 4979A, 4980, and 4981A.

1984—Pub. L. 98–369, div. A, title IV, §491(d)(56), title V, §§511(c)(2), 531(e)(2), 545(b), July 18, 1984, 98 Stat. 852, 862, 886, 896, substituted ''and certain individual retirement annuities'' for ''certain individual retirement annuities, and certain retirement bonds'' in item 4973 and added items 4976 to 4978.

1982—Pub. L. 97–248, title II, §237(c)(2), Sept. 3, 1982, 96 Stat. 511, struck out item 4972 ''Tax on excess contributions for self-employed individuals''.

1974—Pub. L. 93–406, title II, §§1013(b), 2001(f)(2), 2002(h)(3), Sept. 2, 1974, 88 Stat. 920, 957, 970, added chapter heading and analysis of sections 4971 to 4975.

§ 4971. Taxes on failure to meet minimum funding standards

(a) Initial tax

If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

(b) Additional tax

If—

(1) a tax is imposed under subsection (a)(1) on any unpaid minimum required contribution and such amount remains unpaid as of the close of the taxable period, or

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

(c) Definitions

For purposes of this section—

[1] Section repealed by Pub. L. 105–34 without corresponding amendment of chapter analysis.

(1) Accumulated funding deficiency

The term ''accumulated funding deficiency'' has the meaning given to such term by section 431.

(2) Correct

The term ''correct'' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

(3) Taxable period

The term ''taxable period'' means, with respect to an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, the period beginning with the end of the plan year in which there is an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable[1] and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

(4) Unpaid minimum required contribution

(A) In general

The term ''unpaid minimum required contribution'' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

(B) Ordering rule

Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.

(d) Notification of the Secretary of Labor

Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, or

(2) to comment on the imposition of such tax.

In the case of a multiemployer plan which is in reorganization under section 418, the same notice and opportunity shall be provided to the Pension Benefit Guaranty Corporation.

(e) Liability for tax

(1) In general

Except as provided in paragraph (2), the tax imposed by subsection (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(a)(2).

(2) Joint and several liability where employer member of controlled group

(A) In general

If an employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a), (b), (f), or (g).

(B) Controlled group

For purposes of subparagraph (A), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(f) Failure to pay liquidity shortfall

(1) In general

In the case of a plan to which section 430(j)(4) applies, there is hereby imposed a tax of 10 percent of the excess (if any) of—

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under section 430(j) for such quarter (but only if such installment is paid on or before the due date for such installment).

(2) Additional tax

If the plan has a liquidity shortfall as of the close of any quarter and as of the close of each of the following 4 quarters, there is hereby imposed a tax equal to 100 percent of the amount on which tax was imposed by paragraph (1) for such first quarter.

(3) Definitions and special rule

(A) Liquidity shortfall; quarter

For purposes of this subsection, the terms ''liquidity shortfall'' and ''quarter'' have the respective meanings given such terms by section 412(m)(5).[2]

(B) Special rule

If the tax imposed by paragraph (2) is paid with respect to any liquidity shortfall for any quarter, no further tax shall be imposed by this subsection on such shortfall for such quarter.

(4) Waiver by Secretary

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the liquidity shortfall described in paragraph (1) was due to reasonable cause and not willful neglect, and

(B) reasonable steps have been taken to remedy such liquidity shortfall,

the Secretary may waive all or part of the tax imposed by this subsection.

(g) Multiemployer plans in endangered or critical status

(1) In general

Except as provided in this subsection—

(A) no tax shall be imposed under this section for a taxable year with respect to a

[1] So in original. Probably should be followed by a comma.

[2] See References in Text note below.

multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 432, and

(B) any tax imposed under this subsection for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in endangered status pursuant to section 432 shall be in addition to any other tax imposed by this section.

(2) Failure to comply with funding improvement or rehabilitation plan

(A) In general

If any funding improvement plan or rehabilitation plan in effect under section 432 with respect to a multiemployer plan requires an employer to make a contribution to the plan, there is hereby imposed a tax on each failure of the employer to make the required contribution within the time required under such plan.

(B) Amount of tax

The amount of the tax imposed by subparagraph (A) shall be equal to the amount of the required contribution the employer failed to make in a timely manner.

(C) Liability for tax

The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

(3) Failure to meet requirements for plans in endangered or critical status

If—

(A) a plan which is in seriously endangered status fails to meet the applicable benchmarks by the end of the funding improvement period, or

(B) a plan which is in critical status either—

(i) fails to meet the requirements of section 432(e) by the end of the rehabilitation period, or

(ii) has received a certification under section 432(b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of this section for the last plan year in such funding improvement, rehabilitation, or 3-consecutive year period (and each succeeding plan year until such benchmarks or requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such benchmarks or requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

(4) Failure to adopt rehabilitation plan

(A) In general

In the case of a multiemployer plan which is in critical status, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan within the time prescribed under section 432.

(B) Amount of tax

The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor for any taxable year shall be the greater of—

(i) the amount of tax imposed under subsection (a) for the taxable year (determined without regard to this subsection), or

(ii) the amount equal to $1,100 multiplied by the number of days during the taxable year which are included in the period beginning on the day following the close of the 240-day period described in section 432(e)(1)(A) and ending on the day on which the rehabilitation plan is adopted.

(C) Liability for tax

(i) In general

The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

(ii) Plan sponsor

For purposes of clause (i), the term ''plan sponsor'' has the meaning given such term by section 432(i)(9).

(5) Waiver

In the case of a failure described in paragraph (2) or (3) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this subsection. For purposes of this paragraph, reasonable cause includes unanticipated and material market fluctuations, the loss of a significant contributing employer, or other factors to the extent that the payment of tax under this subsection with respect to the failure would be excessive or otherwise inequitable relative to the failure involved.

(6) Terms used in section 432

For purposes of this subsection, any term used in this subsection which is also used in section 432 shall have the meaning given such term by section 432.

(h) Cross references

For disallowance of deduction for taxes paid under this section, see section 275.

For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).

For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, §1013(b), Sept. 2, 1974, 88 Stat. 920; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, §204, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 96–596, §2(a)(1)(J), (2)(H), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 100–203, title IX, §§9304(c)(1), 9305(a), Dec. 22, 1987, 101 Stat. 1330–348, 1330–351; Pub. L. 103–465, title VII, §751(a)(9)(B), Dec. 8, 1994, 108 Stat. 5020; Pub. L. 104–188, title I, §1464(a), Aug. 20, 1996, 110 Stat. 1824; Pub. L. 109–280, title I, §114(e)(1)–(4), title II, §212(b), Aug. 17, 2006, 120 Stat. 854, 855, 915;

Pub. L. 110–458, title I, §§101(d)(2)(F), 102(b)(2)(I), (3)(A), Dec. 23, 2008, 122 Stat. 5099, 5103.)

AMENDMENT OF SECTION

For termination of amendment by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

Section 412, referred to in subsec. (f)(3)(A), was amended generally by Pub. L. 109–280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (m)(5).

Section 3002(b) of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (h), is classified to section 1202(b) of Title 29, Labor.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–458, §101(d)(2)(F)(i), substituted ''minimum required'' for ''required minimum''.

Subsec. (c)(3). Pub. L. 110–458, §101(d)(2)(F)(ii), inserted ''or unpaid minimum required contribution, whichever is applicable'' after ''accumulated funding deficiency'' in two places in introductory provisions.

Subsec. (d)(1). Pub. L. 110–458, §101(d)(2)(F)(ii), inserted ''or unpaid minimum required contribution, whichever is applicable'' after ''accumulated funding deficiency''.

Subsec. (e)(1). Pub. L. 110–458, §101(d)(2)(F)(iii), substituted ''section 412(a)(2)'' for ''section 412(a)(1)(A)''.

Subsec. (e)(2)(A). Pub. L. 110–458, §102(b)(3)(A), amended directory language of Pub. L. 109–280, §212(b)(2). See 2006 Amendment note below.

Subsec. (g)(4)(B)(ii). Pub. L. 110–458, §102(b)(2)(I)(i), substituted ''day following the close of'' for ''first day of''.

Subsec. (g)(4)(C)(ii). Pub. L. 110–458, §102(b)(2)(I)(ii), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: ''For purposes of clause (i), the term 'plan sponsor' in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.''

2006—Subsecs. (a), (b). Pub. L. 109–280, §114(e)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

''(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected.''

Subsec. (c)(1). Pub. L. 109–280, §114(e)(2)(A), substituted ''section 431'' for ''the last two sentences of section 412(a)''.

Subsec. (c)(4). Pub. L. 109–280, §114(e)(2)(B), added par. (4).

Subsec. (e)(1). Pub. L. 109–280, §114(e)(3), substituted ''section 412(a)(1)(A)'' for ''section 412(b)(3)(A)''.

Subsec. (e)(2)(A). Pub. L. 109–280, §§212(b)(2), 221(c), as amended by Pub. L. 110–458, §102(b)(3)(A), temporarily substituted ''If an'' for ''In the case of a plan other than a multiemployer plan, if the'' and ''(f), or (g)'' for ''or (f)''. See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (f)(1). Pub. L. 109–280, §114(e)(4), substituted ''section 430(j)(4)'' for ''section 412(m)(5)'' in introductory provisions and ''section 430(j)'' for ''section 412(m)'' in subpar. (B).

Subsecs. (g), (h). Pub. L. 109–280, §§212(b)(1), 221(c), temporarily added subsec. (g) and redesignated former subsec. (g) as (h). See Effective and Termination Dates of 2006 Amendment note below.

1996—Subsec. (f)(4). Pub. L. 104–188 added par. (4).

1994—Subsec. (e)(1), (2)(A). Pub. L. 103–465, §751(a)(9)(B)(i), substituted ''(a), (b), or (f)'' for ''(a) or (b)''.

Subsecs. (f), (g). Pub. L. 103–465, §751(a)(9)(B)(ii), added subsec. (f) and redesignated former subsec. (f) as (g).

1987—Subsec. (a). Pub. L. 100–203, §9305(a)(2)(A), struck out at end ''The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).''

Pub. L. 100–203, §9304(c)(1), substituted ''10 percent (5 percent in the case of a multiemployer plan)'' for ''5 percent''.

Subsec. (b). Pub. L. 100–203, §9305(a)(2)(B), struck out at end ''The tax imposed by this subsection shall be paid by the employer described in subsection (a).''

Subsecs. (e), (f). Pub. L. 100–203, §9305(a)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1980—Subsec. (b). Pub. L. 96–596, §2(a)(1)(J), substituted ''taxable period'' for ''correction period''.

Subsec. (c)(1). Pub. L. 96–364, §204(1), substituted ''last two sentences'' for ''last sentence''.

Subsec. (c)(3). Pub. L. 96–596, §2(a)(2)(H), substituted provision defining taxable period as the period beginning with the end of the plan year in which there is an accumulated funding deficiency and ending on the earlier of the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (a) of this section or the date on which the tax imposed by subsec. (a) of this section is assessed for provision defining correction period as the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 of this title with respect to the tax imposed by subsec. (b) of this section, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and by any other period which the Secretary determines reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero.

Subsec. (d). Pub. L. 96–364, §204(2), inserted provisions relating to a multiemployer plan in reorganization.

1976—Subsecs. (c), (d). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by section 114(e)(1)–(4) of Pub. L. 109–280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as an Effective Date of 2006 Amendment note under section 401 of this title.

Amendment by section 212(b) of Pub. L. 109–280 applicable with respect to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within such taxable year, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as a note under section 412 of this title.

Amendment by section 212(b) of Pub. L. 109–280 inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109–280, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, title I, § 1464(b), Aug. 20, 1996, 110 Stat. 1825, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendment made by clause (ii) of section 751(a)(9)(B) of the Retirement Protection Act of 1994 [Pub. L. 103–465] (108 Stat. 5020).''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, § 9304(c)(2), Dec. 22, 1987, 101 Stat. 1330–348, provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after 1988.''

Amendment by section 9305(a) of Pub. L. 100–203 applicable with respect to plan years beginning after December 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of amendment by section 212(b) of Pub. L. 109–280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

EXEMPTION FROM EXCISE TAXES FOR CERTAIN MULTIEMPLOYER PENSION PLANS

Pub. L. 109–280, title II, § 214, Aug. 17, 2006, 120 Stat. 918, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, no tax shall be imposed under subsection (a) or (b) of section 4971 of the Internal Revenue Code of 1986 with respect to any accumulated funding deficiency of a plan described in subsection (b) of this section for any taxable year beginning before the earlier of—

''(1) the taxable year in which the plan sponsor adopts a rehabilitation plan under section 305(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(e)] and section 432(e) of such Code (as added by this Act); or

''(2) the taxable year that contains January 1, 2009.

''(b) PLAN DESCRIBED.—A plan described under this subsection is a multiemployer pension plan—

''(1) with less than 100 participants;

''(2) with respect to which the contributing employers participated in a Federal fishery capacity reduction program;

''(3) with respect to which employers under the plan participated in the Northeast Fisheries Assistance Program; and

''(4) with respect to which the annual normal cost is less than $100,000 and the plan is experiencing a funding deficiency on the date of enactment of this Act [Aug. 17, 2006].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

§ 4972. Tax on nondeductible contributions to qualified employer plans

(a) Tax imposed

In the case of any qualified employer plan, there is hereby imposed a tax equal to 10 percent of the nondeductible contributions under the plan (determined as of the close of the taxable year of the employer).

(b) Employer liable for tax

The tax imposed by this section shall be paid by the employer making the contributions.

(c) Nondeductible contributions

For purposes of this section—

(1) In general

The term ''nondeductible contributions'' means, with respect to any qualified employer plan, the sum of—

(A) the excess (if any) of—

(i) the amount contributed for the taxable year by the employer to or under such plan, over

(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(i) the portion of the amount so determined returned to the employer during the taxable year, and

(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

(2) Ordering rule for section 404

For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

(B) then from contributions made during such taxable year.

(3) Contributions which may be returned to employer

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

(4) Special rule for self-employed individuals

For purposes of paragraph (1), if—

(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established,

such excess shall be treated as an amount allowable as a deduction under section 404.

(5) Pre-1987 contributions

The term ''nondeductible contribution'' shall not include any contribution made for a taxable year beginning before January 1, 1987.

(6) Exceptions

In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or

(B) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer.

For purposes of subparagraph (A), the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (A). Subparagraph (B) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).

(7) Defined benefit plan exception

In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6)). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

(d) Definitions

For purposes of this section—

(1) Qualified employer plan

(A) In general

The term ''qualified employer plan'' means—

(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

(ii) an annuity plan described in section 403(a),

(iii) any simplified employee pension (within the meaning of section 408(k)), and

(iv) any simple retirement account (within the meaning of section 408(p)).

(B) Exemption for governmental and tax exempt plans

The term ''qualified employer plan'' does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1).

(2) Employer

In the case of a plan which provides contributions or benefits for employees some or all of whom are self-employed individuals within the meaning of section 401(c)(1), the term ''employer'' means the person treated as the employer under section 401(c)(4).

(Added Pub. L. 99–514, title XI, §1131(c)(1), Oct. 22, 1986, 100 Stat. 2477; amended Pub. L. 100–647, title I, §1011A(e)(1), (2), title II, §2005(a)(1), Nov. 10, 1988, 102 Stat. 3477, 3610; Pub. L. 103–465, title VII, §755(a), Dec. 8, 1994, 108 Stat. 5023; Pub. L. 104–188, title I, §1421(b)(9)(D), Aug. 20, 1996, 110 Stat. 1798; Pub. L. 105–34, title XV, §1507(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 107–16, title VI, §§616(b)(2)(B), 637(a), (b), 652(b), 653(a), June 7, 2001, 115 Stat. 103, 118, 130; Pub. L. 108–311, title IV, §§404(c), 408(b)(9), Oct. 4, 2004, 118 Stat. 1188, 1193; Pub. L. 109–280, title I, §114(e)(5), title VIII, §803(c), Aug. 17, 2006, 120 Stat. 855, 996.)

PRIOR PROVISIONS

A prior section, added Pub. L. 93–406, title II, §2001(f)(1), Sept. 2, 1974, 88 Stat. 955; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, §312(e)(3), Aug. 13, 1981, 95 Stat. 285; Pub. L. 97–448, title I, §103(c)(10)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–369, div. A, title IV, §491(d)(40), July 18, 1984, 98 Stat. 851, related to tax on excess contributions for self-employed individuals, prior to repeal applicable to years beginning after Dec. 31, 1983, by Pub. L. 97–248, title II, §237(c)(1), Sept. 3, 1982, 96 Stat. 511.

AMENDMENTS

2006—Subsec. (c)(6)(A). Pub. L. 109–280, §803(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

''(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

''(ii) the amount of contributions described in section 401(m)(4)(A), or''.

Subsec. (c)(7). Pub. L. 109–280, §114(e)(5), substituted ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))'' for ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)''.

2004—Subsec. (c)(6). Pub. L. 108–311, §408(b)(9), amended directory language of Pub. L. 107–16, §652(b)(3). See 2001 Amendment note below.

Subsec. (c)(6)(A)(ii). Pub. L. 108–311, §404(c), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the sum of—

''(I) the amount of contributions described in section 401(m)(4)(A), plus

''(II) the amount of contributions described in section 402(g)(3)(A), or''.

2001—Subsec. (c)(6). Pub. L. 107–16, §652(b)(4), substituted ''Subparagraph (B)'' for ''Subparagraph (C)'' in concluding provisions.

Pub. L. 107–16, §652(b)(3), as amended by Pub. L. 108–311, §408(b)(9), substituted ''subparagraph (A)'' for ''subparagraph (B)'' in two places in concluding provisions.

Pub. L. 107–16, §652(b)(2), in concluding provisions, struck out first sentence which read as follows: ''If 1 or more defined benefit plans were taken into account in determining the amount allowable as a deduction under section 404 for contributions to any defined contribution plan, subparagraph (B) shall apply only if such defined benefit plans are described in section 404(a)(1)(D).''

Pub. L. 107–16, §637(b), in concluding provisions, inserted at end ''Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).''

Subsec. (c)(6)(A). Pub. L. 107–16, §652(b)(1), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: ''contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

''(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

''(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year,''.

Pub. L. 107–16, §637(a), struck out ''and'' at end.

Subsec. (c)(6)(B). Pub. L. 107–16, §652(b)(1), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 107–16, §637(a), substituted '', or'' for period at end.

Subsec. (c)(6)(B)(i). Pub. L. 107–16, §616(b)(2)(B), substituted ''(within the meaning of section 404(a) and as adjusted under section 404(a)(12))'' for ''(within the meaning of section 404(a))''.

Subsec. (c)(6)(C). Pub. L. 107–16, §652(b)(1), redesignated subpar. (C) as (B).

Pub. L. 107–16, §637(a), added subpar. (C).

Subsec. (c)(7). Pub. L. 107–16, §653(a), added par. (7).

1997—Subsec. (c)(6)(B). Pub. L. 105–34 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7), but only to the extent such contributions do not exceed 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans.''

1996—Subsec. (d)(1)(A)(iv). Pub. L. 104–188 added cl. (iv).

1994—Subsec. (c)(6). Pub. L. 103–465 added par. (6).

1988—Subsec. (c). Pub. L. 100–647, §1011A(e)(1), amended subsec. (c) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) and (2).

Subsec. (c)(4), (5). Pub. L. 100–647, §2005(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (d)(1). Pub. L. 100–647, §1011A(e)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'qualified employer plan' means—

''(A) any plan meeting the requirements of section 401(a) which includes a trust exempt from the tax under section 501(a),

''(B) an annuity plan described in section 403(a), and

''(C) any simplified employee pension (within the meaning of section 408(k)).''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(e)(5) of Pub. L. 109–280 applicable to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year, see section 114(g) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 803(c) of Pub. L. 109–280 applicable to contributions for taxable years beginning after Dec. 31, 2005, see section 803(d) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(c) of Pub. L. 108–311 effective as if included in the provision of Pub. L. 107–16 to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 616(b)(2)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 616(c) of Pub. L. 107–16, set out as a note under section 404 of this title.

Pub. L. 107–16, title VI, §637(d), June 7, 2001, 115 Stat. 118, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

Amendment by section 652(b) of Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2001, see section 652(c) of Pub. L. 107–16, set out as a note under section 404 of this title.

Pub. L. 107–16, title VI, §653(b), June 7, 2001, 115 Stat. 130, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, §1507(b), Aug. 5, 1997, 111 Stat. 1067, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–465, title VII, §755(b), Dec. 8, 1994, 108 Stat. 5024, provided that:

''(1) SECTION 4972(C)(6)(A).—Section 4972(c)(6)(A) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years ending on or after the date of enactment of this Act [Dec. 8, 1994].

''(2) SECTION 4972(C)(6)(B).—Section 4972(c)(6)(B) of such Code (as added by this section) shall apply to taxable years ending on or after December 31, 1992.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(e)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2005(a)(1) of Pub. L. 100–647 effective as if included in the amendment made by section 1131(c) of Pub. L. 99–514, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with special rules in case of plans maintained pursuant to collective bargaining agreements, see section 1131(d) of Pub. L. 99–514, as amended, set out as an Effective Date of 1986 Amendment note under section 404 of this title.

CONSTRUCTION OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 637(c), June 7, 2001, 115 Stat. 118, provided that: ''Nothing in the amendments made by this section [amending this section] shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–108) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

INCREASE IN AMOUNT FOR PLAN TERMINATION INSURANCE UNDER EMPLOYEE RETIREMENT INSURANCE SECURITY ACT OF 1974

Pub. L. 100–647, title I, § 1011A(e)(5), Nov. 10, 1988, 102 Stat. 3478, provided that: ''In the case of any taxable year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

''(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed

''(B) the assets of such plan.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4973. Tax on excess contributions to certain tax-favored accounts and annuities

(a) Tax imposed

In the case of—

(1) an individual retirement account (within the meaning of section 408(a)),

(2) an Archer MSA (within the meaning of section 220(d)),

(3) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),

(4) a Coverdell education savings account (as defined in section 530), or

(5) a health savings account (within the meaning of section 223(d)),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

(b) Excess contributions

For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term ''excess contributions'' means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a contribution to a Roth IRA or a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16)), over

(B) the amount allowable as a deduction under section 219 for such contributions, and

(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed (determined without regard to section 219(f)(6)) to the accounts or for the annuities (including the amount contributed to a Roth IRA) for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account or the individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed. For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(c) Section 403(b) contracts

For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term ''excess contributions'' means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account

(other than a rollover contribution described in section 403(b)(8) or 408(d)(3)(A)(iii)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by—

(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e).

(d) Excess contributions to Archer MSAs

For purposes of this section, in the case of Archer MSAs (within the meaning of section 220(d)), the term ''excess contributions'' means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than rollover contributions described in section 220(f)(5)) which is neither excludable from gross income under section 106(b) nor allowable as a deduction under section 220 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 220(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 220(b)(1) (determined without regard to section 106(b)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the Archer MSA in a distribution to which section 220(f)(3) or section 138(c)(3) applies shall be treated as an amount not contributed.

(e) Excess contributions to Coverdell education savings accounts

For purposes of this section—

(1) In general

In the case of Coverdell education savings accounts maintained for the benefit of any one beneficiary, the term ''excess contributions'' means the sum of—

(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $2,000 (or, if less, the sum of the maximum amounts permitted to be contributed under section 530(c) by the contributors to such accounts for such year); and

(B) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) the distributions out of the accounts for the taxable year (other than rollover distributions); and

(ii) the excess (if any) of the maximum amount which may be contributed to the accounts for the taxable year over the amount contributed to the accounts for the taxable year.

(2) Special rules

For purposes of paragraph (1), the following contributions shall not be taken into account:

(A) Any contribution which is distributed out of the Coverdell education savings account in a distribution to which section 530(d)(4)(C) applies.

(B) Any rollover contribution.

(f) Excess contributions to Roth IRAs

For purposes of this section, in the case of contributions to a Roth IRA (within the meaning of section 408A(b)), the term ''excess contributions'' means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to Roth IRAs (other than a qualified rollover contribution described in section 408A(e)), over

(B) the amount allowable as a contribution under sections 408A(c)(2) and (c)(3), and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts for the taxable year, and

(B) the excess (if any) of the maximum amount allowable as a contribution under sections 408A(c)(2) and (c)(3) for the taxable year over the amount contributed by the individual to all individual retirement plans for the taxable year.

For purposes of this subsection, any contribution which is distributed from a Roth IRA in a distribution described in section 408(d)(4) shall be treated as an amount not contributed.

(g) Excess contributions to health savings accounts

For purposes of this section, in the case of health savings accounts (within the meaning of section 223(d)), the term ''excess contributions'' means the sum of—

(1) the aggregate amount contributed for the taxable year to the accounts (other than a rollover contribution described in section 220(f)(5) or 223(f)(5)) which is neither excludable from gross income under section 106(d) nor allowable as a deduction under section 223 for such year, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the distributions out of the accounts which were included in gross income under section 223(f)(2), and

(B) the excess (if any) of—

(i) the maximum amount allowable as a deduction under section 223(b) (determined without regard to section 106(d)) for the taxable year, over

(ii) the amount contributed to the accounts for the taxable year.

For purposes of this subsection, any contribution which is distributed out of the health savings account in a distribution to which section 223(f)(3) applies shall be treated as an amount not contributed.

(Added Pub. L. 93–406, title II, § 2002(d), Sept. 2, 1974, 88 Stat. 966; amended Pub. L. 94–455, title XV, § 1501(b)(8), title XIX, § 1904(a)(22), Oct. 4, 1976, 90 Stat. 1736, 1814; Pub. L. 95–600, title I, §§ 156(c)(3), (5), 157(b)(3), (j)(1), title VII, § 701(aa)(1), Nov. 6, 1978, 92 Stat. 2803, 2804, 2809, 2921; Pub. L. 96–222, title I, § 101(a)(13)(C), (14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §§ 311(h)(7), (9), (10), 313(b)(2), Aug. 13, 1981, 95 Stat. 282, 286; Pub. L. 98–369, div. A, title IV, § 491(d)(41)–(44), (55), July 18, 1984, 98 Stat. 851, 852; Pub. L. 99–514, title XI, § 1102(b)(1), title XVIII, § 1848(f), Oct. 22, 1986, 100 Stat. 2415, 2858; Pub. L. 100–647, title I, § 1011(b)(3), Nov. 10, 1988, 102 Stat. 3456; Pub. L. 102–318, title V, § 521(b)(41), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, § 1704(t)(70), (72), Aug. 20, 1996, 110 Stat. 1891; Pub. L. 104–191, title III, § 301(e), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105–33, title IV, § 4006(b)(1), Aug. 5, 1997, 111 Stat. 333; Pub. L. 105–34, title II, § 213(d), title III, § 302(b), Aug. 5, 1997, 111 Stat. 817, 828; Pub. L. 105–206, title VI, §§ 6004(d)(10), 6005(b)(8), 6023(18)(A), July 22, 1998, 112 Stat. 795, 799, 825; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(6), (b)(2)(C), (6), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–16, title IV, §§ 401(a)(2), (g)(2)(D), 402(a)(4)(A), title VI, § 641(e)(11), June 7, 2001, 115 Stat. 57, 60, 121; Pub. L. 107–22, § 1(b)(1)(C), (2)(B), (4), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, § 1201(e), Dec. 8, 2003, 117 Stat. 2478; Pub. L. 108–311, title IV, § 408(a)(22), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–311 substituted ''subsection (a)(3)'' for ''subsection (a)(2)'' in introductory provisions.

2003—Subsec. (a)(5). Pub. L. 108–173, § 1201(e)(1), added par. (5).

Subsec. (g). Pub. L. 108–173, § 1201(e)(2), added subsec. (g).

2001—Subsec. (a)(4). Pub. L. 107–22, § 1(b)(1)(C), substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Subsec. (b)(1)(A). Pub. L. 107–16, § 641(e)(11), substituted ''408(d)(3), or 457(e)(16)'' for ''or 408(d)(3)''.

Subsec. (e). Pub. L. 107–22, § 1(b)(4), substituted ''Coverdell education savings'' for ''education individual retirement'' in heading.

Pub. L. 107–16, § 402(a)(4)(A), which directed the substitution of ''qualified tuition'' for ''qualified State tuition'' wherever appearing in subsec. (e), could not be executed because the term ''qualified State tuition'' did not appear subsequent to amendment by section 401(g)(2)(D) of Pub. L. 107–16, which struck out par. (1)(B). See below.

Subsec. (e)(1). Pub. L. 107–22, § 1(b)(2)(B), substituted ''Coverdell education savings'' for ''education individual retirement'' in introductory provisions.

Subsec. (e)(1)(A). Pub. L. 107–16, § 401(a)(2), (g)(2)(D), substituted ''$2,000'' for ''$500'' and inserted ''and'' at end.

Subsec. (e)(1)(B), (C). Pub. L. 107–16, § 401(g)(2)(D), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''if any amount is contributed (other than a contribution described in section 530(b)(2)(B)) during such year to a qualified State tuition program for the benefit of such beneficiary, any amount contributed to such accounts for such taxable year; and''.

Subsec. (e)(2)(A). Pub. L. 107–22, § 1(b)(2)(B), substituted ''Coverdell education savings'' for ''education individual retirement''.

2000—Subsec. (a)(2). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer'' for ''a Archer''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(6)], substituted ''Archer MSA'' for ''medical savings account''.

Subsec. (d). Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(6), (b)(2)(C), (6)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading, ''Archer MSAs'' for ''medical savings accounts'' in introductory provisions, and ''Archer MSA'' for ''medical savings account'' in concluding provisions.

1998—Pub. L. 105–206, § 6023(18)(A), amended section catchline generally. Prior to amendment, catchline read as follows: ''Tax on excess contributions to individual retirement accounts, medical savings accounts, certain section 403(b) contracts, and certain individual retirement annuities''.

Subsec. (b)(1)(A). Pub. L. 105–206, § 6005(b)(8)(B)(i), inserted ''a contribution to a Roth IRA or'' after ''other than''.

Subsec. (b)(2)(C). Pub. L. 105–206, § 6005(b)(8)(B)(ii), inserted ''(including the amount contributed to a Roth IRA)'' after ''annuities''.

Subsec. (e)(1). Pub. L. 105–206, § 6004(d)(10)(A), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''In the case of education individual retirement accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means—

''(A) the amount by which the amount contributed for the taxable year to such accounts exceeds $500, and

''(B) any amount contributed to such accounts for any taxable year if any amount is contributed during such year to a qualified State tuition program for the benefit of such beneficiary.''

Subsec. (e)(2)(B), (C). Pub. L. 105–206, § 6004(d)(10)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''Any contribution described in section 530(b)(2)(B) to a qualified State tuition program.''

Subsec. (f). Pub. L. 105–206, § 6005(b)(8)(C), made technical amendment to directory language of Pub. L. 105–34, § 302(b). See 1997 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 105–206, § 6005(b)(8)(A)(i), substituted ''Roth IRAs'' for ''such accounts''.

Subsec. (f)(2)(B). Pub. L. 105–206, § 6005(b)(8)(A)(ii), substituted ''by the individual to all individual retirement plans'' for ''to the accounts''.

1997—Subsec. (a)(4). Pub. L. 105–34, § 213(d)(1), added par. (4).

Subsec. (d). Pub. L. 105–33 inserted ''or section 138(c)(3)'' after ''section 220(f)(3)'' in concluding provisions.

Subsec. (e). Pub. L. 105–34, § 213(d)(2), added subsec. (e).

Subsec. (f). Pub. L. 105–34, § 302(b), as amended by Pub. L. 105–206, § 6005(b)(8)(C), added subsec. (f).

1996—Pub. L. 104–191, § 301(e)(1), inserted ''medical savings accounts,'' after ''accounts,'' in section catchline.

Subsec. (a). Pub. L. 104–191, § 301(e)(1)–(3), struck out ''or'' at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Subsec. (b)(1)(A). Pub. L. 104–188, § 1704(t)(72), provided that section 521(b)(41) of Pub. L. 102–318 shall be applied as if ''section'' appeared instead of ''sections'' in the material proposed to be stricken. See 1992 Amendment note below.

Pub. L. 104–188, § 1704(t)(70), substituted ''section'' for ''sections''.

Subsec. (d). Pub. L. 104–191, § 301(e)(4), added subsec. (d).

1992—Subsec. (b)(1)(A). Pub. L. 102–318, which directed the substitution of ''sections 402(c)'' for ''sections 402(a)(5), 402(a)(7)'', was executed by substituting ''sec-

tions 402(c)'' for ''section 402(a)(5), 402(a)(7)''. See 1996 Amendment note above.

1988—Subsec. (b). Pub. L. 100–647 substituted ''shall be computed without regard to section 219(g)'' for ''(after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B)'' in last sentence.

1986—Subsec. (b). Pub. L. 99–514, § 1102(b)(1), inserted at end ''For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 (after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B).''

Pub. L. 99–514, § 1848(f), in introductory provisions, substituted ''or individual retirement annuities'' for '', individual retirement annuities, or bonds'', in par. (1)(A), substituted ''(other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3)), over'' for ''or bonds (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3)), over'', and in par. (2)(A), struck out ''or bonds'' after ''for the annuities''.

1984—Pub. L. 98–369, § 491(d)(55), substituted ''and certain individual retirement annuities'' for ''certain individual retirement annuities, and certain retirement bonds'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 491(d)(41), inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), struck out par. (3) which imposed a tax in the case of a retirement bond, within the meaning of section 409, established for the benefit of any individual, and in the concluding provision substituted ''or annuity'' for '', annuity, or bond'' and ''or annuities'' for '', annuities, or bonds''.

Subsec. (b). Pub. L. 98–369, § 491(d)(43), substituted in provision following par. (2)(C) ''or the individual retirement annuity'' for '', individual retirement annuity, or bond''.

Subsec. (b)(1)(A). Pub. L. 98–369, § 491(d)(42), which directed the amendment of subpar. (A) by substituting ''and 408(d)(3)'' for ''408(d)(3), and 409(b)(3)(C)'' was executed, as the probable intent of Congress, by substituting ''or 408(d)(3))'' for ''408(d)(3)), or 409(b)(3)(C)''.

Subsec. (c)(1). Pub. L. 98–369, § 491(d)(44), substituted ''or 408(d)(3)(A)(iii)'' for '', 408(d)(3)(A)(iii), or 409(b)(3)(C)''.

1981—Subsec. (a). Pub. L. 97–34, § 311(h)(9), substituted ''The tax imposed by this subsection shall be paid by such individual'' for ''The tax imposed by this subsection shall be paid by the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate''.

Subsec. (b)(1)(A). Pub. L. 97–34, § 313(b)(2), inserted ''405(d)(3),'' after ''403(b)(8),''.

Subsec. (b)(1)(B). Pub. L. 97–34, § 311(h)(7), substituted ''section 219'' for ''section 219 or 220''.

Subsec. (b)(2)(C). Pub. L. 97–34, § 311(h)(7), (10), substituted ''section 219'' for ''section 219 or 220'', and ''section 219(f)(6)'' for ''sections 219(c)(5) and 220(c)(6)''.

1980—Subsec. (b)(1)(A). Pub. L. 96–222, § 101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (c)(1). Pub. L. 96–222, § 101(a)(13)(C), substituted ''409(b)(3)(C)'' for ''409(d)(3)(C)''.

1978—Subsec. (b)(1)(A). Pub. L. 95–600, § 156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, § 157(b)(3), substituted ''reduced by the sum of—'' for ''reduced by the excess (if any) of'', struck out ''the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable years and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408(d)(1)'' in provision preceding par. (A), and added subpars. (A), (B), and (C).

Subsec. (b). Pub. L. 95–600, §§ 157(j)(1), 701(aa)(1), struck out in last sentence ''if such distribution consists of an excess contribution solely because of employer contributions to a plan or contract described in section 219(b)(2) or by reason of the application of section 219(b)(1) (without regard to the $1,500 limitation) or section 220(b)(1) (without regard to the $1,750 limitation) and only if such distribution does not exceed the excess of $1,500 or $1,750 if applicable, over the amount described in paragraph (1)(B)'' after ''as an amount not contributed''.

Subsec. (c)(1). Pub. L. 95–600, § 156(c)(5), inserted ''(other than a rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C))'' after ''account''.

1976—Subsec. (a)(3). Pub. L. 94–455, §§ 1501(b)(8)(A), 1904(a)(22)(A), substituted ''the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate'' for ''such individual'', effective for taxable years beginning after December 31, 1976 and substituted ''such individual'' for ''the individual to whom a deduction is allowed for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate'', effective for the first day of the first month which begins more than 90 days after Oct. 4, 1976.

Subsec. (b)(1)(B). Pub. L. 94–455, § 1501(b)(8)(B), inserted ''or 220'' after ''under section 219''.

Subsec. (b)(2). Pub. L. 94–455, § 1501(b)(8)(C), inserted ''or 220'' after ''under section 219'' and ''the taxable year and'' before ''all prior taxable years'' and struck out provisions relating to the treatment of contributions out of individual retirement accounts, annuities or bonds to which section 408(d)(4) applied.

Subsec. (c). Pub. L. 94–455, § 1904(a)(22)(B), substituted ''subsection (a)(2)'' for ''subsection (a)(3)'' in provisions preceding par. (1).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Amendment by section 401(a)(2), (g)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 401(h) of Pub. L. 107–16, set out as a note under section 25A of this title.

Amendment by section 402(a)(4)(A) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(e)(11) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(18)(A) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by sections 6004(d)(10) and 6005(b)(8) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by section 213(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Amendment by section 302(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Amendment by Pub. L. 105–33 applicable to taxable years beginning after Dec. 31, 1998, see section 4006(c) of Pub. L. 105–33, set out as an Effective Date note under section 138 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(b)(1) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1848(f) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(7), (9), (10) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 156(c)(3), (5) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Amendment by section 157(b)(3) of Pub. L. 95–600 applicable to determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95–600, set out as a note under section 219 of this title.

Pub. L. 95–600, title I, §157(j)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contributions made for taxable years beginning after December 31, 1977.''

Pub. L. 95–600, title VII, §701(aa)(2), Nov. 6, 1978, 92 Stat. 2921, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in section 1501 of the Tax Reform Act of 1976 [section 1501 of Pub. L. 94–455] at the time of the enactment of such Act [Oct. 4, 1976].''

Pub. L. 95–600, title VII, §703(j)(13), Nov. 6, 1978, 92 Stat. 2942, provided that: ''Notwithstanding section 1904(d) of the Tax Reform Act of 1976 [Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title], the amendment made by section 1904(a)(22)(A) of such Act [amending this section] shall take effect on the date of the enactment of such Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(8) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

Amendment by section 1904(a)(22) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Pub. L. 93–406, title II, §2002(i)(2), Sept. 2, 1974, 88 Stat. 971, provided that: ''The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) [enacting this section and sections 4974 and 6693 of this title and amending sections 37, 46, 50, 56, 72, 801, 805, 901, 3401, and 6047 of this title] shall take effect on January 1, 1975.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4974. Excise tax on certain accumulations in qualified retirement plans

(a) General rule

If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

(b) Minimum required distribution

For purposes of this section, the term ''minimum required distribution'' means the minimum amount required to be distributed during a taxable year under section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may

be, as determined under regulations prescribed by the Secretary.

(c) Qualified retirement plan

For purposes of this section, the term ''qualified retirement plan'' means—

(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) an annuity plan described in section 403(a),

(3) an annuity contract described in section 403(b),

(4) an individual retirement account described in section 408(a), or

(5) an individual retirement annuity described in section 408(b).

Such term includes any plan, contract, account, or annuity which, at any time, has been determined by the Secretary to be such a plan, contract, account, or annuity.

(d) Waiver of tax in certain cases

If the taxpayer establishes to the satisfaction of the Secretary that—

(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.

(Added Pub. L. 93–406, title II, § 2002(e), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, § 157(i)(1), Nov. 6, 1978, 92 Stat. 2808; Pub. L. 99–514, title XI, § 1121(a)(1), title XVIII, § 1852(a)(7)(B), (C), Oct. 22, 1986, 100 Stat. 2464, 2866.)

AMENDMENTS

1986—Pub. L. 99–514, § 1121(a)(1), amended section generally, substituting provisions imposing an excise tax on certain accumulations in qualified retirement plans for provisions imposing an excise tax on certain accumulations in individual retirement accounts and annuities.

Subsec. (a). Pub. L. 99–514, § 1852(a)(7)(B), substituted ''section 408(a)(6) or 408(b)(3)'' for ''section 408(a)(6) or (7), or 408(b)(3) or (4)''.

Subsec. (b). Pub. L. 99–514, § 1852(a)(7)(C), substituted ''section 408(a)(6) or 408(b)(3)'' for ''section 408(a)(6) or (7) or 408(b)(3) or (4)''.

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1121(a)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(7)(B), (C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, § 157(i)(2), Nov. 6, 1978, 92 Stat. 2809, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4975. Tax on prohibited transactions

(a) Initial taxes on disqualified person

There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

(b) Additional taxes on disqualified person

In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

(c) Prohibited transaction

(1) General rule

For purposes of this section, the term ''prohibited transaction'' means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

(2) Special exemption

The Secretary shall establish an exemption procedure for purposes of this subsection. Pur-

suant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

(A) administratively feasible,

(B) in the interests of the plan and of its participants and beneficiaries, and

(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

(3) Special rule for individual retirement accounts

An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

(4) Special rule for Archer MSAs

An individual for whose benefit an Archer MSA (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 220(e)(2) applies to such transaction.

(5) Special rule for Coverdell education savings accounts

An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.

(6) Special rule for health savings accounts

An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e)(2) to such account.

(d) Exemptions

Except as provided in subsection (f)(6), the prohibitions provided in subsection (c) shall not apply to—

(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

(B) is not made available to highly compensated employees (within the meaning of section 414(q)) in an amount greater than the amount made available to other employees,

(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

(D) bears a reasonable rate of interest, and

(E) is adequately secured;

(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

(3) any loan to an[1] leveraged employee stock ownership plan (as defined in subsection (e)(7)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

(4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

[1] So in original. Probably should be ''a''.

(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than a reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction) or which is exempt from section 406 of such Act by reason of section 408(b)(12) of such Act;

(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F);

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F);

(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) such stock is in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)),[2]

(B) such stock is held by such trust as of the date of the enactment of this paragraph,

(C) such sale is pursuant to an election under section 1362(a) by such bank or company,

(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale

[2] So in original. Another closing parenthesis probably should precede the comma.

are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made;

(17) Any[3] transaction in connection with the provision of investment advice described in subsection (e)(3)(B) to a participant or beneficiary in a plan that permits such participant or beneficiary to direct the investment of plan assets in an individual account, if—

(A) the transaction is—

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (f)(8) are met,[4]

(18) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person (other than a fiduciary described in subsection (e)(3)) with respect to a plan if—

(A) the transaction involves a block trade,

(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length[5] transaction, and

(D) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length[5] transaction with an unrelated party,[4]

(19) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person if—

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary of Labor may determine by regulation,

(B) either—

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length[5] transaction with an unrelated party,

(D) if[6] the disqualified person has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph, and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue,[4]

(20) transactions described in subparagraphs (A), (B), and (D) of subsection (c)(1) between a plan and a person that is a disqualified person other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of subsection (e)(3)(B)) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in subparagraph (F), (G), (H), or (I) of subsection (e)(2), or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration,[4]

(21) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan (as defined in this section) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other disqualified person person,[7] if—

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the

[3] So in original. Probably should not be capitalized.

[4] So in original. The comma probably should be a semicolon.

[5] So in original. Probably should be ''arm's-length''.

[6] So in original. The word ''if'' probably should not appear.

[7] So in original.

plan than the terms generally available in comparable arm's length[5] foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction,[4]

(22) any transaction described in subsection (c)(1)(A) involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if—

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of section 270.17a–7(b) of title 17, Code of Federal Regulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is disclosed pursuant to subparagraph (D)), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H),

(E) each plan participating in the transaction has assets of at least $100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7) of the Employee Retirement Income Security Act of 1974), the master trust has assets of at least $100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the parties involved in the cross-trade; and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H), and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of non-compliance.

The written report shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time,[4] or

(23) except as provided in subsection (f)(11), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

(e) Definitions

(1) Plan

For purposes of this section, the term ''plan'' means—

(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a),

(B) an individual retirement account described in section 408(a),

(C) an individual retirement annuity described in section 408(b),

(D) an Archer MSA described in section 220(d),

(E) a health savings account described in section 223(d),

(F) a Coverdell education savings account described in section 530, or

(G) a trust, plan, account, or annuity which, at any time, has been determined by

the Secretary to be described in any preceding subparagraph of this paragraph.

(2) Disqualified person

For purposes of this section, the term ''disqualified person'' means a person who is—

(A) a fiduciary;

(B) a person providing services to the plan;

(C) an employer any of whose employees are covered by the plan;

(D) an employee organization any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

(3) Fiduciary

For purposes of this section, the term ''fiduciary'' means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

(4) Stockholdings

For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(5) Partnerships; trusts

For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(6) Member of family

For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

(7) Employee stock ownership plan

The term ''employee stock ownership plan'' means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(*o*), and, if applicable, section 409(n), section 409(p), and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

(8) Qualifying employer security

The term ''qualifying employer security'' means any employer security within the meaning of section 409(*l*). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the in-

vestment company, its investment adviser, or its principal underwriter.

(9) Section made applicable to withdrawal liability payment funds

For purposes of this section—

(A) In general

The term ''plan'' includes a trust described in section 501(c)(22).

(B) Disqualified person

In the case of any trust to which this section applies by reason of subparagraph (A), the term ''disqualified person'' includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.

(f) Other definitions and special rules

For purposes of this section—

(1) Joint and several liability

If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

(2) Taxable period

The term ''taxable period'' means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212,

(B) the date on which the tax imposed by subsection (a) is assessed, or

(C) the date on which correction of the prohibited transaction is completed.

(3) Sale or exchange; encumbered property

A transfer or real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

(4) Amount involved

The term ''amount involved'' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the taxable period.

(5) Correction

The terms ''correction'' and ''correct'' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

(6) Exemptions not to apply to certain transactions

(A) In general

In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)), the exemptions provided by subsection (d) (other than paragraphs (9) and (12)) shall not apply to a transaction in which the plan directly or indirectly—

(i) lends any part of the corpus or income of the plan to,

(ii) pays any compensation for personal services rendered to the plan to, or

(iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(B) Special rules for shareholder-employees, etc.

(i) In general

For purposes of subparagraph (A), the following shall be treated as owner-employees:

(I) A shareholder-employee.

(II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a)(37)).

(III) An employer or association of employees which establishes such an individual retirement plan under section 408(c).

(ii) Exception for certain transactions involving shareholder-employees

Subparagraph (A)(iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e)(7)) by a shareholder-employee, a member of the family (as defined in section 267(c)(4)) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A).

(iii) Loan exception

For purposes of subparagraph (A)(i), the term ''owner-employee'' shall only include a person described in subclause (II) or (III) of clause (i).

(C) Shareholder-employee

For purposes of subparagraph (B), the term ''shareholder-employee'' means an employee

or officer of an S corporation who owns (or is considered as owning within the meaning of section 318(a)(1)) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

(7) S corporation repayment of loans for qualifying employer securities

A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.

(8) Provision of investment advice to participant and beneficiaries

(A) In general

The prohibitions provided in subsection (c) shall not apply to transactions described in subsection (d)(17) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

(B) Eligible investment advice arrangement

For purposes of this paragraph, the term ''eligible investment advice arrangement'' means an arrangement—

(i) which either—

(I) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(II) uses a computer model under an investment advice program meeting the requirements of subparagraph (C) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(ii) with respect to which the requirements of subparagraphs (D), (E), (F), (G), (H), and (I) are met.

(C) Investment advice program using computer model

(i) In general

An investment advice program meets the requirements of this subparagraph if the requirements of clauses (ii), (iii), and (iv) are met.

(ii) Computer model

The requirements of this clause are met if the investment advice provided under the investment advice program is provided pursuant to a computer model that—

(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(IV) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(V) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

(iii) Certification

(I) In general

The requirements of this clause are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary of Labor, that the computer model meets the requirements of clause (ii).

(II) Renewal of certifications

If, as determined under regulations prescribed by the Secretary of Labor, there are material modifications to a computer model, the requirements of this clause are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

(III) Eligible investment expert

The term ''eligible investment expert'' means any person which meets such requirements as the Secretary of Labor may provide and which does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

(iv) Exclusivity of recommendation

The requirements of this clause are met with respect to any investment advice program if—

(I) the only investment advice provided under the program is the advice gen-

erated by the computer model described in clause (ii), and

(II) any transaction described in (d)(17)(A)(ii)[8] occurs solely at the direction of the participant or beneficiary.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in clause (i), but only if such request has not been solicited by any person connected with carrying out the arrangement.

(D) Express authorization by separate fiduciary

The requirements of this subparagraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

(E) Audits

(i) In general

The requirements of this subparagraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—

(I) conducts an annual audit of the arrangement for compliance with the requirements of this paragraph, and

(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this paragraph.

(ii) Special rule for individual retirement and similar plans

In the case of a plan described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of subsection (e)(1), in lieu of the requirements of clause (i), audits of the arrangement shall be conducted at such times and in such manner as the Secretary of Labor may prescribe.

(iii) Independent auditor

For purposes of this subparagraph, an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

(F) Disclosure

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)—

(I) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser,[9] in the development of the investment advice program and in the selection of investment options available under the plan,

(II) of the past performance and historical rates of return of the investment options available under the plan,

(III) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(IV) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(V) the[10] manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(VI) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(VII) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(VIII) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(ii) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser—

(I) maintains the information described in clause (i) in accurate form and in the manner described in subparagraph (H),

(II) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(III) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(IV) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

(G) Other conditions

The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

[8] So in original. Probably should be ''subsection (d)(17)(A)(ii)''.

[9] So in original. The comma probably should not appear.

[10] So in original. Probably should be ''of the''.

(ii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(iii) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length [5] transaction would be.

(H) Standards for presentation of information

(i) In general

The requirements of this subparagraph are met if the notification required to be provided to participants and beneficiaries under subparagraph (F)(i) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(ii) Model form for disclosure of fees and other compensation

The Secretary of Labor shall issue a model form for the disclosure of fees and other compensation required in subparagraph (F)(i)(III) which meets the requirements of clause (i).

(I) Maintenance for 6 years of evidence of compliance

The requirements of this subparagraph are met if a fiduciary adviser who has provided advice referred to in subparagraph (A) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(J) Definitions

For purposes of this paragraph and subsection (d)(17)—

(i) Fiduciary adviser

The term ''fiduciary adviser'' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) by the person to a participant or beneficiary of the plan and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV), or

(VI) an employee, agent, or registered representative of a person described in subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this title, a person who develops the computer model described in subparagraph (C)(ii) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this paragraph and subsection (d)(17), except that the Secretary of Labor may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

(ii) Affiliate

The term ''affiliate'' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

(iii) Registered representative

The term ''registered representative'' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

(9) Block trade

The term ''block trade'' means any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

(10) Adequate consideration

The term ''adequate consideration'' means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities

Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

(11) Correction period

(A) In general

For purposes of subsection (d)(23), the term ''correction period'' means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(23)) constitute a prohibited transaction.

(B) Exceptions

(i) Employer securities

Subsection (d)(23) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) of such Act).

(ii) Knowing prohibited transaction

In the case of any disqualified person, subsection (d)(23) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a prohibited transaction.

(C) Abatement of tax where there is a correction

If a transaction is not treated as a prohibited transaction by reason of subsection (d)(23), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(D) Definitions

For purposes of this paragraph and subsection (d)(23)—

(i) Security

The term ''security'' has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

(ii) Commodity

The term ''commodity'' has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

(iii) Correct

The term ''correct'' means, with respect to a transaction—

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

(g) Application of section

This section shall not apply—

(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

(2) to a governmental plan (within the meaning of section 414(d)); or

(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

(h) Notification of Secretary of Labor

Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

(i) Cross reference

For provisions concerning coordination procedures between Secretary of Labor and Secretary of the Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 93–406, title II, § 2003(a), Sept. 2, 1974, 88 Stat. 971; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title I, § 141(f)(5), (6), Nov. 6, 1978, 92 Stat. 2795; Pub. L. 96–222, title I, § 101(a)(7)(C), (K), (L)(iv)(III), (v)(XI), Apr. 1, 1980, 94 Stat. 198–201; Pub. L. 96–364, title II, §§ 208(b), 209(b), Sept. 26, 1980, 94 Stat. 1289, 1290; Pub. L. 96–596, § 2(a)(1)(K),(L), (2)(I), (3)(F), Dec. 24, 1980, 94 Stat. 3469, 3471; Pub. L. 97–448, title III, § 305(d)(5), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, § 491(d)(45), (46), (e)(7), (8), July 18, 1984, 98 Stat. 851–853; Pub. L. 99–514, title XI, § 1114(b)(15)(A), title XVIII, §§ 1854(f)(3)(A), 1899A(51), Oct. 22, 1986, 100 Stat. 2452, 2882, 2961; Pub. L. 101–508, title XI, § 11701(m), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 104–188, title I,

§§ 1453(a), 1702(g)(3), Aug. 20, 1996, 110 Stat. 1817, 1873; Pub. L. 104–191, title III, § 301(f), Aug. 21, 1996, 110 Stat. 2051; Pub. L. 105–34, title II, § 213(b), title X, § 1074(a), title XV, §§ 1506(b)(1), 1530(c)(10), title XVI, § 1602(a)(5), Aug. 5, 1997, 111 Stat. 816, 949, 1065, 1079, 1094; Pub. L. 105–206, title VI, § 6023(19), July 22, 1998, 112 Stat. 825; Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(7), (b)(7), (10)], Dec. 21, 2000, 114 Stat. 2763, 2763A–628, 2763A–629; Pub. L. 107–16, title VI, §§ 612(a), 656(b), June 7, 2001, 115 Stat. 100, 134; Pub. L. 107–22, § 1(b)(1)(D), (3)(D), July 26, 2001, 115 Stat. 197; Pub. L. 108–173, title XII, § 1201(f), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 108–357, title II, §§ 233(c), 240(a), Oct. 22, 2004, 118 Stat. 1434, 1437; Pub. L. 109–135, title IV, § 413(a)(2), Dec. 21, 2005, 119 Stat. 2641; Pub. L. 109–280, title VI, §§ 601(b)(1), (2), 611(a)(2), (c)(2), (d)(2), (e)(2), (g)(2), 612(b), Aug. 17, 2006, 120 Stat. 958, 959, 967, 969–971, 974, 976; Pub. L. 110–458, title I, § 106(a)(2), (b)(2), (c), Dec. 23, 2008, 122 Stat. 5106.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Part 1 of subtitle E of title IV of such Act is classified generally to part 1 (29 U.S.C. 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Sections 401, 405 to 408, 3003, 4044, 4223, and 4231 of such Act are classified to sections 1101, 1105 to 1108, 1203, 1344, 1403, and 1411, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (d)(16)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

The Investment Company Act of 1940, referred to in subsecs. (e)(8) and (g), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (f)(8)(J)(i)(I), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§ 80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (f)(8)(J)(i)(IV), (10)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. Section 6 of the Act is classified to section 78f of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2008—Subsec. (d)(17). Pub. L. 110–458, § 106(a)(2)(A), substituted ''that permits'' for ''and that permits'' in introductory provisions.

Subsec. (d)(18). Pub. L. 110–458, § 106(b)(2)(A), in introductory provisions, substituted ''disqualified person'' for ''party in interest'' and ''subsection (e)(3)'' for ''subsection (e)(3)(B)''.

Subsec. (d)(19) to (21). Pub. L. 110–458, § 106(b)(2)(B), substituted ''disqualified person'' for ''party in interest'' wherever appearing.

Subsec. (d)(21)(C). Pub. L. 110–458, § 106(b)(2)(C), struck out ''or less'' before ''than 3 percent''.

Subsec. (f)(8)(A). Pub. L. 110–458, § 106(a)(2)(B)(i), substituted ''subsection (d)(17)'' for ''subsection (b)(14)''.

Subsec. (f)(8)(C)(iv)(II). Pub. L. 110–458, § 106(a)(2)(B)(ii), substituted ''(d)(17)(A)(ii)'' for ''subsection (b)(14)(B)(ii)''.

Subsec. (f)(8)(F)(i)(I). Pub. L. 110–458, § 106(a)(2)(B)(iii), substituted ''fiduciary adviser,'' for ''financial adviser''.

Subsec. (f)(8)(I). Pub. L. 110–458, § 106(a)(2)(B)(iv), substituted ''subsection (c)'' for ''section 406''.

Subsec. (f)(8)(J)(i). Pub. L. 110–458, § 106(a)(2)(B)(v), substituted ''a participant'' for ''the participant'' in introductory provisions and concluding provisions, inserted ''referred to in subsection (e)(3)(B)'' after ''investment advice'' in introductory provisions, and substituted ''subsection (d)(4)'' for ''section 408(b)(4)'' in subcl. (II).

Subsec. (f)(11)(B)(i). Pub. L. 110–458, § 106(c), inserted ''of the Employee Retirement Income Security Act of 1974'' after ''section 407(d)(1)'' and ''of such Act'' after ''section 407(d)(2)''.

2006—Subsec. (d)(17). Pub. L. 109–280, § 601(b)(1), added par. (17).

Subsec. (d)(18). Pub. L. 109–280, § 611(a)(2)(A), added par. (18).

Subsec. (d)(19). Pub. L. 109–280, § 611(c)(2), added par. (19).

Subsec. (d)(20). Pub. L. 109–280, § 611(d)(2)(A), added par. (20).

Subsec. (d)(21). Pub. L. 109–280, § 611(e)(2), added par. (21).

Subsec. (d)(22). Pub. L. 109–280, § 611(g)(2), added par. (22).

Subsec. (d)(23). Pub. L. 109–280, § 612(b)(1), added par. (23).

Subsec. (f)(8). Pub. L. 109–280, § 601(b)(2), added par. (8).

Subsec. (f)(9). Pub. L. 109–280, § 611(a)(2)(B), added par. (9).

Subsec. (f)(10). Pub. L. 109–280, § 611(d)(2)(B), added par. (10).

Subsec. (f)(11). Pub. L. 109–280, § 612(b)(2), added par. (11).

2005—Subsec. (d)(16)(A). Pub. L. 109–135, § 413(a)(2)(A), inserted ''or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1))'' after ''a bank (as defined in section 581)''.

Subsec. (d)(16)(C). Pub. L. 109–135, § 413(a)(2)(B), inserted ''or company'' after ''such bank''.

2004—Subsec. (d)(16). Pub. L. 108–357, § 233(c), added par. (16).

Subsec. (f)(7). Pub. L. 108–357, § 240(a), added par. (7).

2003—Subsec. (c)(6). Pub. L. 108–173, § 1201(f)(1), added par. (6).

Subsec. (e)(1)(E) to (G). Pub. L. 108–173, § 1201(f)(2), added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

2001—Subsec. (c)(5). Pub. L. 107–22, § 1(b)(1)(D), (3)(D), in heading, substituted ''Coverdell education savings'' for ''education individual retirement'' and in text, substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Subsec. (e)(1)(E). Pub. L. 107–22, § 1(b)(1)(D), substituted ''a Coverdell education savings'' for ''an education individual retirement''.

Subsec. (e)(7). Pub. L. 107–16, § 656(b), inserted '', section 409(p),'' after ''409(n)'' in concluding provisions.

Subsec. (f)(6)(B)(iii). Pub. L. 107–16, § 612(a), added cl. (iii).

2000—Subsec. (c)(4). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer'' for ''a Archer''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(7), (b)(7)], substituted ''Archer MSAs'' for ''medical savings accounts'' in heading and ''Archer MSA'' for ''medical savings account'' in text.

Subsec. (e)(1)(D). Pub. L. 106–554, § 1(a)(7) [title II, § 202(b)(10)], substituted ''an Archer'' for ''a Archer''.

Pub. L. 106–554, § 1(a)(7) [title II, § 202(a)(7)], substituted ''Archer MSA'' for ''medical savings account''.

1998—Subsec. (c)(3). Pub. L. 105–206, § 6023(19)(A), substituted ''exempt from the tax'' for ''exempt for the tax''.

Subsec. (i). Pub. L. 105–206, § 6023(19)(B), substituted ''Secretary of the Treasury'' for ''Secretary of Treasury''.

1997—Subsec. (a). Pub. L. 105–34, § 1074(a), substituted ''15 percent'' for ''10 percent''.

Subsec. (c)(4). Pub. L. 105–34, § 1602(a)(5), substituted ''if section 220(e)(2) applies to such transaction.'' for ''if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 220(e)(2) to such account.''

Subsec. (c)(5). Pub. L. 105–34, § 213(b)(2), added par. (5).

Subsec. (d). Pub. L. 105–34, § 1506(b)(1)(B)(ii), struck out concluding provisions which read as follows: ''The exemptions provided by this subsection (other than paragraphs (9) and (12)) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982), a participant or beneficiary of an individual retirement account or an individual retirement annuity (as defined in section 408), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.''

Pub. L. 105–34, § 1506(b)(1)(B)(i), substituted ''Except as provided in subsection (f)(6), the prohibitions'' for ''The prohibitions'' in introductory provisions.

Subsec. (e)(1)(D) to (F). Pub. L. 105–34, § 213(b)(1), struck out ''or'' at end of subpar. (D), added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (e)(7). Pub. L. 105–34, § 1530(c)(10), inserted ''and section 664(g)'' after ''section 409(n)'' in concluding provisions.

Subsec. (f)(6). Pub. L. 105–34, § 1506(b)(1)(A), added par. (6).

1996—Subsec. (a). Pub. L. 104–188, § 1453(a), substituted ''10 percent'' for ''5 percent''.

Subsec. (c)(4). Pub. L. 104–191, § 301(f)(1), added par. (4).

Subsec. (d)(13). Pub. L. 104–188, § 1702(g)(3), substituted ''408(b)(12)'' for ''408(b)''.

Subsec. (e)(1). Pub. L. 104–191, § 301(f)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (or a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be such a trust, plan, or account).''

1990—Subsec. (d)(13). Pub. L. 101–508 inserted before semicolon at end ''or which is exempt from section 406 of such Act by reason of section 408(b) of such Act''.

1986—Subsec. (d). Pub. L. 99–514, § 1899A(51), inserted a closing parenthesis after ''and (12)'' in second sentence.

Subsec. (d)(1)(B). Pub. L. 99–514, § 1114(b)(15)(A), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''highly compensated employees, officers, or shareholders''.

Subsec. (e)(7). Pub. L. 99–514, § 1854(f)(3)(A), inserted '', section 409(*o*), and, if applicable, section 409(n)'' in last sentence.

1984—Subsec. (d). Pub. L. 98–369, § 491(d)(45), substituted in provision following par. (15) ''or an individual retirement annuity (as defined in section 408)'' for '', individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)''.

Subsec. (e)(1). Pub. L. 98–369, § 491(d)(46), struck out ''or 405(a)'' after ''section 403(a)'' and ''or a retirement bond described in section 409'' after ''section 408(b)'', and substituted ''or annuity'' for ''annuity, or bond'' and ''or account'' for ''account, or bond''.

Subsec. (e)(7). Pub. L. 98–369, § 491(e)(7), substituted ''section 409(h)'' for ''section 409A(h)'', ''section 409(e)(4)'' for ''section 409A(e)(4)'', and ''section 409(e)'' for ''section 409A(e)''.

Subsec. (e)(8). Pub. L. 98–369, § 491(e)(8), substituted ''section 409(*l*)'' for ''section 409A(*l*)''.

1983—Subsec. (d). Pub. L. 97–448 inserted '', as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982'' after ''section 1379'' in last sentence.

1980—Subsec. (b). Pub. L. 96–596, § 2(a)(1)(K), substituted ''taxable period'' for ''correction period''.

Subsec. (d)(14), (15). Pub. L. 96–364, § 208(b), added pars. (14) and (15).

Subsec. (e)(7). Pub. L. 96–222, § 101(a)(7)(K), (L)(iv)(III), (v)(XI), substituted references to an employee stock ownership plan, for references to a leveraged employee stock ownership plan wherever appearing therein, and substituted provisions relating to treatment of a plan as an employee stock ownership plan, for provisions relating to treatment of a plan as a leveraged employee stock ownership plan.

Subsec. (e)(8). Pub. L. 96–222, § 101(a)(7)(C), substituted provisions defining ''qualifying employer security'' within the meaning of section 409A(*l*), for provisions defining such term as stock, or otherwise an equity security, or within the meaning of section 503(e)(1) to (3).

Subsec. (e)(9). Pub. L. 96–364, § 209(b), added par. (9).

Subsec. (f)(2)(B), (C). Pub. L. 96–596, § 2(a)(2)(I), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(4)(B). Pub. L. 96–596, § 2(a)(1)(L), substituted ''taxable period'' for ''correction period''.

Subsec. (f)(6). Pub. L. 96–596, § 2(a)(3)(F), struck out par. (6), which defined correction period, with respect to a prohibited transaction, as the period beginning on the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsec. (b) of this section under section 6212 of this title, extended by any period in which a deficiency cannot be assessed under section 6213(a) of this title and any other period which the Secretary determines is reasonable and necessary to bring about the correction of the prohibited transaction.

1978—Subsec. (d)(3). Pub. L. 95–600, § 141(f)(6), substituted ''leveraged employee'' for ''employee''.

Subsec. (e)(7). Pub. L. 95–600, § 141(f)(5), substituted in heading ''Leveraged employee'' for ''Employee'', and in text, ''leveraged employee'' for ''employee'' and inserted provision that a plan not be treated as a leveraged employee stock ownership plan unless it meet the requirements of section 409A(e) and (h).

1976—Subsecs. (c) to (f). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VI, § 601(b)(4), Aug. 17, 2006, 120 Stat. 966, as amended by Pub. L. 110–458, title I, § 106(a)(3), Dec. 23, 2008, 122 Stat. 5106, provided that: ''Except as provided in this subsection [amending this section and enacting provisions set out as notes under this section], the amendments made by this subsection shall apply with respect to advice referred to in section 4975(e)(3)(B) of the Internal Revenue Code of 1986 provided after December 31, 2006.''

Pub. L. 109–280, title VI, §611(h), Aug. 17, 2006, 120 Stat. 975, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1002, 1108, and 1112 of Title 29, Labor] shall apply to transactions occurring after the date of the enactment of this Act [Aug. 17, 2006].

''(2) BONDING RULE.—The amendments made by subsection (b) [amending section 1112 of Title 29] shall apply to plan years beginning after such date.''

Pub. L. 109–280, title VI, §612(c), Aug. 17, 2006, 120 Stat. 977, provided that: ''The amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act [Aug. 17, 2006] constitutes a prohibited transaction.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 413(d) of Pub. L. 109–135, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 233(c) of Pub. L. 108–357 effective Oct. 22, 2004, see section 233(e) of Pub. L. 108–357, set out as a note under section 512 of this title.

Pub. L. 108–357, title II, §240(b), Oct. 22, 2004, 118 Stat. 1437, provided that: ''The amendment made by this section [amending this section] shall apply to distributions with respect to S corporation stock made after December 31, 1997.''

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–22 effective July 26, 2001, see section 1(c) of Pub. L. 107–22, set out as a note under section 26 of this title.

Pub. L. 107–16, title VI, §612(c), June 7, 2001, 115 Stat. 100, provided that: ''The amendment made by this section [amending this section and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 2001.''

Amendment by section 656(b) of Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107–16, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 213(b) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105–34, set out as a note under section 26 of this title.

Pub. L. 105–34, title X, §1074(b), Aug. 5, 1997, 111 Stat. 949, provided that: ''The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1506(b)(1) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 1506(c) of Pub. L. 105–34, set out as a note under section 409 of this title.

Amendment by section 1530(c)(10) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1602(a)(5) of Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as a note under section 62 of this title.

Pub. L. 104–188, title I, §1453(b), Aug. 20, 1996, 110 Stat. 1817, provided that: ''The amendment made by this section [amending this section] shall apply to prohibited transactions occurring after the date of the enactment of this Act [Aug. 20, 1996].''

Amendment by section 1702(g)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(15)(A) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1854(f)(3)(A) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(45), (46) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 491(e)(7), (8) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective on date of enactment of Subchapter S Revision Act of 1982 [Oct. 19, 1982], see section 311(c)(4) of Pub. L. 97–448, set out as a note under section 1368 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96–596 with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96–596, set out as an Effective Date note under section 4961 of this title.

Amendment by section 208(b) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by section 209(b) of Pub. L. 96–364 applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Pub. L. 96–222, title I, §101(b)(1)(C), Apr. 1, 1980, 94 Stat. 205, provided that: ''The amendment made by subparagraph (C) of subsection (a)(6) [probably should be '(a)(7)', which amended this section] shall apply to stock acquired after December 31, 1979.''

Amendment by section 101(a)(7)(K), (L)(iv)(III), (v)(XI) of Pub. L. 96–222 effective, except as otherwise

provided, as if it had been included in the provision of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title I, §141(h), as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraphs (5) and (6) of subsection (f) [section 141(f)(5), (6) of Pub. L. 95–600] shall apply—

''(1) insofar as they make the requirements of subsections (e) and (h)(1)(B) of section 409A [now section 409] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applicable to section 4975 of such Code, to stock acquired after December 31, 1979, and

''(2) insofar as they make paragraphs (1)(A) and (2) of section 409A(h) [now section 409(h)] of such Code applicable to such section 4975, to distributions after December 31, 1978.''

EFFECTIVE DATE; SAVINGS PROVISION

Pub. L. 93–406, title II, §2003(c), Sept. 2, 1974, 88 Stat. 978, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1)(A) The amendments made by this section [enacting this section and amending section 503 of this title] shall take effect on January 1, 1975.

''(B) If, before the amendments made by this section [enacting this section and amending section 503 of this title] take effect, an organization described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503(b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

''(2) Section 4975 of the Internal Revenue Code of 1986 (relating to tax on prohibited transactions) shall not apply to—

''(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law);

''(B) a lease of joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law;

''(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

''(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

''(ii) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition:

''(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

''(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1107(a)(2)] and if the plan receives not less than adequate consideration.

For the purposes of this paragraph, the term 'disqualified person' has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1986.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

DETERMINATION OF FEASIBILITY OF APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAMS FOR INDIVIDUAL RETIREMENT AND SIMILAR PLANS

Pub. L. 109–280, title VI, §601(b)(3), Aug. 17, 2006, 120 Stat. 964, provided that:

''(A) SOLICITATION OF INFORMATION.—As soon as practicable after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor, in consultation with the Secretary of the Treasury, shall—

''(i) solicit information as to the feasibility of the application of computer model investment advice programs for plans described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of section 4975(e)(1) of the Internal Revenue Code of 1986, including soliciting information from—

''(I) at least the top 50 trustees of such plans, determined on the basis of assets held by such trustees, and

''(II) other persons offering computer model investment advice programs based on nonproprietary products, and

''(ii) shall on the basis of such information make the determination under subparagraph (B).

The information solicited by the Secretary of Labor under clause (i) from persons described in subclauses (I) and (II) of clause (i) shall include information on computer modeling capabilities of such persons with respect to the current year and preceding year, including such capabilities for investment accounts maintained by such persons.

''(B) DETERMINATION OF FEASIBILITY.—The Secretary of Labor, in consultation with the Secretary of the Treasury, shall, on the basis of information received under subparagraph (A), determine whether there is any computer model investment advice program which may be utilized by a plan described in subparagraph (A)(i) to provide investment advice to the account beneficiary of the plan which—

''(i) utilizes relevant information about the account beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

''(ii) takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolio of the account beneficiary, and

''(iii) allows the account beneficiary, in directing the investment of assets, sufficient flexibility in obtaining advice to evaluate and select investment options.

The Secretary of Labor shall report the results of such determination to the committees of Congress referred to in subparagraph (D)(ii) not later than December 31, 2007.

''(C) APPLICATION OF COMPUTER MODEL INVESTMENT ADVICE PROGRAM.—

''(i) CERTIFICATION REQUIRED FOR USE OF COMPUTER MODEL.—

''(I) RESTRICTION ON USE.—Subclause (II) of section 4975(f)(8)(B)(i) of the Internal Revenue Code of 1986 shall not apply to a plan described in subparagraph (A)(i).

''(II) RESTRICTION LIFTED IF MODEL CERTIFIED.—If the Secretary of Labor determines under subparagraph (B) or (D) that there is a computer model investment advice program described in subparagraph (B), subclause (I) shall cease to apply as of the date of such determination.

''(ii) CLASS EXEMPTION IF NO INITIAL CERTIFICATION BY SECRETARY.—If the Secretary of Labor determines under subparagraph (B) that there is no computer model investment advice program described in subparagraph (B), the Secretary of Labor shall grant a class exemption from treatment as a prohibited transaction under section 4975(c) of the Internal Revenue Code of 1986 to any transaction described in section 4975(d)(17)(A) of such Code with respect to plans described in subparagraph (A)(i), subject to such conditions as set forth in such exemption as are in the interests of the plan and its account beneficiary and protective of the rights of the account beneficiary and as are necessary to—

''(I) ensure the requirements of sections 4975(d)(17) and 4975(f)(8) (other than subparagraph (C) thereof) of the Internal Revenue Code of 1986 are met, and

''(II) ensure the investment advice provided under the investment advice program utilizes prescribed objective criteria to provide asset allocation portfolios comprised of securities or other property available as investments under the plan.

If the Secretary of Labor solicits any information under subparagraph (A) from a person and such person does not provide such information within 60 days after the solicitation, then, unless such failure was due to reasonable cause and not wilful neglect, such person shall not be entitled to utilize the class exemption under this clause.

''(D) SUBSEQUENT DETERMINATION.—

''(i) IN GENERAL.—If the Secretary of Labor initially makes a determination described in subparagraph (C)(ii), the Secretary may subsequently determine that there is a computer model investment advice program described in subparagraph (B). If the Secretary makes such subsequent determination, then the class exemption described in subparagraph (C)(ii) shall cease to apply after the later of—

''(I) the date which is 2 years after such subsequent determination, or

''(II) the date which is 3 years after the first date on which such exemption took effect.

''(ii) REQUESTS FOR DETERMINATION.—Any person may request the Secretary of Labor to make a determination under this subparagraph with respect to any computer model investment advice program, and the Secretary of Labor shall make a determination with respect to such request within 90 days. If the Secretary of Labor makes a determination that such program is not described in subparagraph (B), the Secretary shall, within 10 days of such determination, notify the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate of such determination and the reasons for such determination.

''(E) EFFECTIVE DATE.—The provisions of this paragraph shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

COORDINATION OF 2006 AMENDMENT WITH EXISTING EXEMPTIONS

Pub. L. 109–280, title VI, §601(c), Aug. 17, 2006, 120 Stat. 966, provided that: ''Any exemption under section 408(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(b)] and section 4975(d) of the Internal Revenue Code of 1986 provided by the amendments made by this section [amending this section and section 1108 of Title 29, Labor] shall not in any manner alter existing individual or class exemptions, provided by statute or administrative action.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS

Pub. L. 94–455, title VIII, §803(h), Oct. 4, 1976, 90 Stat. 1590, provided that: ''The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently.''

§ 4976. Taxes with respect to funded welfare benefit plans

(a) General rule

If—

(1) an employer maintains a welfare benefit fund, and

(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

(b) Disqualified benefit

For purposes of subsection (a)—

(1) In general

The term ''disqualified benefit'' means—

(A) any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account is required to be established for such employee under section 419A(d) and such payment is not from such account,

(B) any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of section 505(b) with respect to such benefit (whether or not such requirements apply to such plan), and

(C) any portion of a welfare benefit fund reverting to the benefit of the employer.

(2) Exception for collective bargaining plans

Paragraph (1)(B) shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that the benefits referred to in paragraph (1)(B) were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Exception for nondeductible contributions

Paragraph (1)(C) shall not apply to any amount attributable to a contribution to the fund which is not allowable as a deduction under section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under section 419(d)).

(4) Exception for certain amounts charged against existing reserve

Subparagraphs (A) and (B) of paragraph (1) shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits (as defined in section 512(a)(3)(E)) or charged against the income on such reserve.

(c) Definitions

For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

(Added Pub. L. 98–369, div. A, title V, § 511(c)(1), July 18, 1984, 98 Stat. 861; amended Pub. L. 99–514, title XVIII, § 1851(a)(11), Oct. 22, 1986, 100 Stat. 2861; Pub. L. 100–647, title I, § 1011B(a)(27)(A), (B), title III, § 3021(a)(1)(C), Nov. 10, 1988, 102 Stat. 3487, 3626; Pub. L. 101–140, title II, § 203(a)(2), Nov. 8, 1989, 103 Stat. 830.)

CODIFICATION

Pub. L. 101–140 amended this section to read as if the amendments made by section 1011B(a)(27) of Pub. L. 100–647 (enacting subsec. (c)) had not been enacted. Subsequent to enactment by Pub. L. 100–647, subsec. (c) was amended by Pub. L. 100–647, § 3021(a)(1)(C). See 1988 Amendment note below.

AMENDMENTS

1989—Subsec. (b)(5). Pub. L. 101–140 amended subsec. (b) to read as if amendments by Pub. L. 100–647, § 1011B(a)(27)(B), had not been enacted, see 1988 Amendment note below.

Subsecs. (c), (d). Pub. L. 101–140 amended this section to read as if amendments by Pub. L. 100–647, § 1011B(a)(27)(A), had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b)(5). Pub. L. 100–647, § 1011B(a)(27)(B), added par. (5) relating to limitation in case of benefits to which section 89 applies.

Subsec. (c). Pub. L. 100–647, § 1011B(a)(27)(A), added subsec. (c) relating to tax on funded welfare benefit funds which include discriminatory employee benefit plan. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 100–647, § 3021(a)(1)(C)(i), substituted ''any testing year (as defined in section 89(j)(13))'' for ''any plan year'', see Codification note above.

Subsec. (c)(2)(A). Pub. L. 100–647, § 3021(a)(1)(C)(ii), substituted ''testing'' for ''plan'' in cls. (i) and (ii), see Codification note above.

Subsec. (d). Pub. L. 100–647, § 1011B(a)(27)(A), redesignated former subsec. (c) as (d).

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subsection (a), the term 'disqualified benefit' means—

''(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

''(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

''(3) any portion of such fund reverting to the benefit of the employer.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(a)(27)(A), (B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 3021(a)(1)(C) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to benefits provided after Dec. 31, 1985, see section 511(e)(7) of Pub. L. 98–369, set out as a note under section 419 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147

and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4977. Tax on certain fringe benefits provided by an employer

(a) Imposition of tax

In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

(b) Excess fringe benefits

For purposes of subsection (a), the term ''excess fringe benefits'' means, with respect to any calendar year—

(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

(2) 1 percent of the aggregate amount of compensation—

(A) which was paid by the employer during such calendar year to employees, and

(B) was includible in gross income for purposes of chapter 1.

(c) Effect of election on section 132(a)

If—

(1) an election under this section is in effect with respect to an employer for any calendar year, and

(2) at all times on or after January 1, 1984, and before the close of the calendar year involved, substantially all of the employees of the employer were entitled to employee discounts on goods or services provided by the employer in 1 line of business,

for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(h)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

(d) Period of election

An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

(e) Treatment of controlled groups

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(f) Section to apply only to employment within the United States

Except as otherwise provided in regulations, this section shall apply only with respect to employment within the United States.

(Added Pub. L. 98–369, div. A, title V, § 531(e)(1), July 18, 1984, 98 Stat. 885; amended Pub. L. 99–514, title XVIII, § 1853(c)(1), (2), Oct. 22, 1986, 100 Stat. 2871; Pub. L. 103–66, title XIII, § 13213(d)(3)(D), Aug. 10, 1993, 107 Stat. 474; Pub. L. 104–188, title I, § 1704(t)(66), Aug. 20, 1996, 110 Stat. 1890.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188 substituted ''section 132(h)'' for ''section 132(i)(2)'' in closing provisions.

1993—Subsec. (c). Pub. L. 103–66 substituted ''section 132(i)(2)'' for ''section 132(g)(2)'' in closing provisions.

1986—Subsec. (c)(2). Pub. L. 99–514, § 1853(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business,''.

Subsec. (f). Pub. L. 99–514, § 1853(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to reimbursements or other payments in respect of expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103–66, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as a note under section 132 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

APPLICATION OF SUBSECTION (c) OF THIS SECTION TO AGRICULTURAL COOPERATIVES INCORPORATED IN 1964

Pub. L. 99–514, title XVIII, § 1853(c)(3), Oct. 22, 1986, 100 Stat. 2871, provided that: ''For purposes of determining whether the requirements of section 4977(c) of the Internal Revenue Code of 1954 [now 1986] are met in the case of an agricultural cooperative incorporated in 1964, there shall not be taken into account employees of a member of the same controlled group as such cooperative which became a member during July 1980.''

§ 4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives

(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied or acquired any qualified employer securities in a qualified gratuitous transfer to which section 664(g) applied, such plan or cooperative disposes of any qualified securities and—

(1) the total number of shares held by such plan or cooperative after such disposition is less than the total number of employer securities held immediately after such sale, or

(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30 percent of the total value of all employer securities as of such disposition (60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied),

there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) shall be equal to 10 percent of the amount realized on the disposition.

(2) Limitation

The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied or acquired in the qualified gratuitous transfer to which section 664(g) applied determined as if such securities were disposed of—

(A) first from qualified securities to which section 1042 applied or to which section 664(g) applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

(B) then from any other employer securities.

If subsection (d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.

(3) Distributions to employees

The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

(c) Liability for payment of taxes

The tax imposed by this subsection shall be paid by—

(1) the employer, or

(2) the eligible worker-owned cooperative,

that made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be).

(d) Section not to apply to certain dispositions

(1) Certain distributions to employees

This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

(A) the death of the employee,

(B) the retirement of the employee after the employee has attained 59½ years of age,

(C) the disability of the employee (within the meaning of section 72(m)(7)), or

(D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

(2) Certain reorganizations

In the case of any exchange of qualified securities in any reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

(3) Liquidation of corporation into cooperative

In the case of any exchange of qualified securities pursuant to the liquidation of the corporation issuing qualified securities into the eligible worker-owned cooperative in a transaction which meets the requirements of section 332 (determined by substituting ''100 percent'' for ''80 percent'' each place it appears in section 332(b)(1)), such exchange shall not be treated as a disposition for purposes of this section.

(4) Dispositions to meet diversification requirements

This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28).

(e) Definitions and special rules

For purposes of this section—

(1) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given to such term by section 4975(e)(7).

(2) Qualified securities

The term ''qualified securities'' has the meaning given to such term by section 1042(c)(1); except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1)).

(3) Eligible worker-owned cooperative

The term ''eligible worker-owned cooperative'' has the meaning given to such term by section 1042(c)(2).

(4) Disposition

The term ''disposition'' includes any distribution.

(5) Employer securities

The term ''employer securities'' has the meaning given to such term by section 409(*l*).

(Added Pub. L. 98–369, div. A, title V, § 545(a), July 18, 1984, 98 Stat. 894; amended Pub. L. 99–514, title XVIII, § 1854(e), Oct. 22, 1986, 100 Stat. 2880; Pub., L. 100–203, title X, § 10413(b)(1), Dec. 22, 1987, 101 Stat. 1330–438; Pub. L. 100–647, title I, § 1011B(j)(4), Nov. 10, 1988, 102 Stat. 3492; Pub. L. 101–239, title VII, § 7304(a)(2)(C)(ii), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, § 1602(b)(4), Aug. 20, 1996, 110 Stat. 1834; Pub. L. 105–34, title XV, § 1530(c)(11)–(14), Aug. 5, 1997, 111 Stat. 1079; Pub. L. 108–311, title IV, § 408(a)(23), Oct. 4, 2004, 118 Stat. 1192.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–311 substituted ''(60 percent'' for ''60 percent''.

1997—Subsec. (a). Pub. L. 105–34, § 1530(c)(11)(A), inserted ''or acquired any qualified employer securities

in a qualified gratuitous transfer to which section 664(g) applied'' after ''section 1042 applied'' in introductory provisions.

Subsec. (a)(2). Pub. L. 105–34, §1530(c)(11)(B), inserted before comma at end ''60 percent of the total value of all employer securities as of such disposition in the case of any qualified employer securities acquired in a qualified gratuitous transfer to which section 664(g) applied)''.

Subsec. (b)(2). Pub. L. 105–34, §1530(c)(12)(A), inserted ''or acquired in the qualified gratuitous transfer to which section 664(g) applied'' after ''section 1042 applied'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 105–34, §1530(c)(12)(B), inserted ''or to which section 664(g) applied'' after ''section 1042 applied''.

Subsec. (c). Pub. L. 105–34, §1530(c)(13), substituted ''written statement described in section 664(g)(1)(E) or in section 1042(b)(3) (as the case may be)'' for ''written statement described in section 1042(b)(3)''.

Subsec. (e)(2). Pub. L. 105–34, §1530(c)(14), inserted before period at end ''; except that such section shall be applied without regard to subparagraph (B) thereof for purposes of applying this section and section 4979A with respect to securities acquired in a qualified gratuitous transfer (as defined in section 664(g)(1))''.

1996—Subsec. (b)(2). Pub. L. 104–188 added subpars. (A) and (B) and closing provisions and struck out former subpars. (A) to (D) and closing provisions which read as follows:

''(A) first, from section 133 securities (as defined in section 4978B(e)(2)) acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

''(B) second, from section 133 securities (as so defined) acquired before such 3-year period unless such securities (or proceeds from the disposition) have been allocated to accounts of participants or beneficiaries.

''(C) third, from qualified securities to which section 1042 applied acquired during the 3-year period ending on the date of the disposition, beginning with the securities first so acquired, and

''(D) then from any other employer securities.

If subsection (d) or section 4978B(d) applies to a disposition, the disposition shall be treated as made from employer securities in the opposite order of the preceding sentence.''

1989—Subsec. (b)(2). Pub. L. 101–239 substituted ''determined as if such securities were disposed of—'', subpars. (A) to (D), and concluding provision for ''(determined as if such securities were disposed of in the order described in section 4978A(e))''.

1988—Subsec. (d)(4). Pub. L. 100–647 added par. (4).

1987—Subsec. (b)(2). Pub. L. 100–203 substituted ''(determined as if such securities were disposed of in the order described in section 4978A(e))'' for ''(determined as if such securities were disposed of before any other securities)''.

1986—Subsec. (a)(1). Pub. L. 99–514, §1854(e)(1), substituted ''than'' for ''then''.

Subsec. (b)(1). Pub. L. 99–514, §1854(e)(2), substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 99–514, §1854(e)(3), substituted ''section 1042(b)(3)'' for ''section 1042(a)(2)(B)''.

Subsec. (d)(1)(C). Pub. L. 99–514, §1854(e)(4), substituted ''section 72(m)(7)'' for ''section 72(m)(5)''.

Subsec. (d)(3). Pub. L. 99–514, §1854(e)(7), added par. (3).

Subsec. (e)(2). Pub. L. 99–514, §1854(e)(5), substituted ''section 1042(c)(1)'' for ''section 1042(b)(1)''.

Subsec. (e)(3). Pub. L. 99–514, §1854(e)(6), substituted ''section 1042(c)(2)'' for ''section 1042(b)(1)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1602(b)(1) of Pub. L. 104–188 applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as an Effective Date of Repeal note under former section 133 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title X, §10413(c), Dec. 22, 1987, 101 Stat. 1330–438, provided that: ''The amendments made by this section [enacting section 4978A of this title and amending this section] shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98–369, div. A, title V, §545(c), July 18, 1984, 98 Stat. 896, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 4978A. Repealed. Pub. L. 101–239, title VII, § 7304(a)(2)(C)(i), Dec. 19, 1989, 103 Stat. 2353]

Section, added Pub. L. 100–203, title X, §10413(a), Dec. 22, 1987, 101 Stat. 1330–436; amended Pub. L. 100–647, title VI, §6060(a), Nov. 10, 1988, 102 Stat. 3699, related to tax on certain dispositions of employer securities to which section 2057 applied.

EFFECTIVE DATE OF REPEAL

Repeal applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 409 of this title.

[§ 4978B. Repealed. Pub. L. 104–188, title I, § 1602(b)(5)(A), Aug. 20, 1996, 110 Stat. 1834]

Section, added Pub. L. 101–239, title VII, §7301(d)(1), Dec. 19, 1989, 103 Stat. 2347; amended Pub. L. 101–508, title XI, §11701(e), Nov. 5, 1990, 104 Stat. 1388–507, related to tax on disposition of employer securities to which former section 133 of this title applied.

EFFECTIVE DATE OF REPEAL

Repeal applicable to loans made after Aug. 20, 1996, with exception and provisions relating to certain refinancings, see section 1602(c) of Pub. L. 104–188, set out as a note under former section 133 of this title.

§ 4979. Tax on certain excess contributions

(a) General rule

In the case of any plan, there is hereby imposed a tax for the taxable year equal to 10 percent of the sum of—

(1) any excess contributions under such plan for the plan year ending in such taxable year, and

(2) any excess aggregate contributions under the plan for the plan year ending in such taxable year.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer.

(c) Excess contributions

For purposes of this section, the term ''excess contributions'' has the meaning given such term by sections 401(k)(8)(B), 408(k)(6)(C), and 501(c)(18).

(d) Excess aggregate contribution

For purposes of this section, the term ''excess aggregate contribution'' has the meaning given to such term by section 401(m)(6)(B). For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1).

(e) Plan

For purposes of this section, the term ''plan'' means—

(1) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(2) any annuity plan described in section 403(a),

(3) any annuity contract described in section 403(b),

(4) a simplified employee pension of an employer which satisfies the requirements of section 408(k), and

(5) a plan described in section 501(c)(18).

Such term includes any plan which, at any time, has been determined by the Secretary to be such a plan.

(f) No tax where excess distributed within specified period after close of year

(1) In general

No tax shall be imposed under this section on any excess contribution or excess aggregate contribution, as the case may be, to the extent such contribution (together with any income allocable thereto through the end of the plan year for which the contribution was made) is distributed (or, if forfeitable, is forfeited) before the close of the first 2½ months (6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3))) of the following plan year.

(2) Year of inclusion

Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in the recipient's taxable year in which such distributions were made.

(Added Pub. L. 99–514, title XI, § 1117(b)(1), Oct. 22, 1986, 100 Stat. 2461; amended Pub. L. 100–647, title I, § 1011(*l*)(8)–(11), Nov. 10, 1988, 102 Stat. 3470, 3471; Pub. L. 109–280, title IX, § 902(e)(1)–(3)(A), Aug. 17, 2006, 120 Stat. 1038.)

AMENDMENTS

2006—Subsec. (f). Pub. L. 109–280, § 902(e)(1)(B), substituted ''specified period after'' for ''2½ months of'' in heading.

Subsec. (f)(1). Pub. L. 109–280, § 902(e)(1)(A), (3)(A), inserted ''through the end of the plan year for which the contribution was made'' after ''thereto'' and ''(6 months in the case of an excess contribution or excess aggregate contribution to an eligible automatic contribution arrangement (as defined in section 414(w)(3)))'' after ''2½ months''.

Subsec. (f)(2). Pub. L. 109–280, § 902(e)(2), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

''(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than $100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made.''

1988—Subsec. (a)(1). Pub. L. 100–647, § 1011(*l*)(8), struck out ''a cash or deferred arrangement which is part of'' after ''contributions under''.

Subsec. (c). Pub. L. 100–647, § 1011(*l*)(9), struck out ''403(b),'' and substituted ''408(k)(6)(C)'' for ''408(k)(8)(B)''.

Subsec. (d). Pub. L. 100–647, § 1011(*l*)(10), inserted sentence at end relating to determination of excess aggregate contributions under certain annuity contracts.

Subsec. (f)(2). Pub. L. 100–647, § 1011(*l*)(11), substituted ''Year of inclusion'' for ''Included in prior year'' as heading, and amended text generally. Prior to amendment, text read as follows: ''Any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 401 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out this sec-

tion, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4979A. Tax on certain prohibited allocations of qualified securities

(a) Imposition of tax

If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative,

(2) there is an allocation described in section 664(g)(5)(A),

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

(b) Prohibited allocation

For purposes of this section, the term ''prohibited allocation'' means—

(1) any allocation of qualified securities acquired in a sale to which section 1042 applies which violates the provisions of section 409(n), and

(2) any benefit which accrues to any person in violation of the provisions of section 409(n).

(c) Liability for tax

The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or

(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

(d) Special statute of limitations for tax attributable to certain allocations

The statutory period for the assessment of any tax imposed by this section on an allocation described in subsection (a)(2) of qualified employer securities shall not expire before the date which is 3 years from the later of—

(1) the 1st allocation of such securities in connection with a qualified gratuitous transfer (as defined in section 664(g)(1)), or

(2) the date on which the Secretary is notified of the allocation described in subsection (a)(2).

(e) Definitions and special rules

For purposes of this section—

(1) Definitions

Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

(2) Special rules relating to tax imposed by reason of paragraph (3) or (4) of subsection (a)

(A) Prohibited allocations

The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

(B) Synthetic equity

The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

(C) Special rule during first nonallocation year

For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

(D) Statute of limitations

The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

(Added and amended Pub. L. 99–514, title XI, § 1172(b)(2), title XVIII, § 1854(a)(9)(A), Oct. 22, 1986, 100 Stat. 2514, 2877; Pub. L. 101–239, title VII, § 7304(a)(2)(D), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 104–188, title I, § 1704(t)(22), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title XV, § 1530(c)(15)–(17), Aug. 5, 1997, 111 Stat. 1079, 1080; Pub. L. 107–16, title VI, § 656(c), June 7, 2001, 115 Stat. 134.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–16, § 656(c)(1), added pars. (3) and (4) and, in concluding provisions, substituted ''there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.'' for ''there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.''

Subsec. (c). Pub. L. 107–16, § 656(c)(2), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The tax imposed by this section shall be paid by—

''(1) the employer sponsoring such plan, or

''(2) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).''

Subsec. (e). Pub. L. 107–16, § 656(c)(3), amended heading and text of subsec. (e) generally. Prior to amend-

ment, text read as follows: ''Terms used in this section have the same respective meaning as when used in section 4978.''

1997—Subsec. (a). Pub. L. 105–34, § 1530(c)(15), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''If there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.''

Subsec. (c). Pub. L. 105–34, § 1530(c)(16), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''The tax imposed by this section shall be paid by—

''(1) the employer sponsoring such plan, or

''(2) the eligible worker-owned cooperative,

which made the written statement described in section 1042(b)(3)(B).''

Subsecs. (d), (e). Pub. L. 105–34, § 1530(c)(17), added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (c). Pub. L. 104–188 amended directory language of Pub. L. 101–239, § 7304(a)(2)(D)(ii). See 1989 Amendment note below.

1989—Subsec. (b)(1). Pub. L. 101–239, § 7304(a)(2)(D)(i), struck out ''or section 2057'' after ''section 1042''.

Subsec. (c). Pub. L. 101–239, § 7304(a)(2)(D)(ii), as amended by Pub. L. 104–188, struck out ''or section 2057(d)'' after ''section 1042(b)(3)(B)'' in concluding provisions.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1172(b)(2)(A), inserted reference to section 2057.

Subsec. (c). Pub. L. 99–514, § 1172(b)(2)(B), inserted reference to section 2057(d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to plan years beginning after Dec. 31, 2004, except that in the case of any employee stock ownership plan established after Mar. 14, 2001, or established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of this title is not in effect on such date, amendment applicable to plan years ending after Mar. 14, 2001, see section 656(d) of Pub. L. 107–16, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to estates of decedents dying after Dec. 19, 1989, see section 7304(a)(3) of Pub. L. 101–239, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1172(b)(2) of Pub. L. 99–514 applicable to sales after Oct. 22, 1986, with respect to which election is made by executor of an estate who is required to file the return of the tax imposed by this title on a date (including extensions) after Oct. 22, 1986, see section 1172(c) of Pub. L. 99–514, set out as a note under section 409 of this title.

EFFECTIVE DATE

Pub. L. 99–514, title XVIII, § 1854(a)(9)(D), Oct. 22, 1986, 100 Stat. 2878, provided that: ''The amendments made by this paragraph [enacting this section and amending section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 4980. Tax on reversion of qualified plan assets to employer

(a) Imposition of tax

There is hereby imposed a tax of 20 percent of the amount of any employer reversion from a qualified plan.

(b) Liability for tax

The tax imposed by subsection (a) shall be paid by the employer maintaining the plan.

(c) Definitions and special rules

For purposes of this section—

(1) Qualified plan

The term ''qualified plan'' means any plan meeting the requirements of section 401(a) or 403(a), other than—

(A) a plan maintained by an employer if such employer has, at all times, been exempt from tax under subtitle A, or

(B) a governmental plan (within the meaning of section 414(d)).

Such term shall include any plan which, at any time, has been determined by the Secretary to be a qualified plan.

(2) Employer reversion

(A) In general

The term ''employer reversion'' means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

(B) Exceptions

The term ''employer reversion'' shall not include—

(i) except as provided in regulations, any amount distributed to or on behalf of any employee (or his beneficiaries) if such amount could have been so distributed before termination of such plan without violating any provision of section 401,

(ii) any distribution to the employer which is allowable under section 401(a)(2)—

(I) in the case of a multiemployer plan, by reason of mistakes of law or fact or the return of any withdrawal liability payment,

(II) in the case of a plan other than a multiemployer plan, by reason of mistake of fact, or

(III) in the case of any plan, by reason of the failure of the plan to initially qualify or the failure of contributions to be deductible, or

(iii) any transfer described in section 420(f)(2)(B)(ii)(II).

(3) Exception for employee stock ownership plans

(A) In general

If, upon an employer reversion from a qualified plan, any applicable amount is

transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or a tax credit employee stock ownership plan (as described in section 409), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) if the requirements of subparagraphs (B), (C), and (D) are met.

(B) Investment in employer securities

The requirements of this subparagraph are met if, within 90 days after the transfer (or such longer period as the Secretary may prescribe), the amount transferred is invested in employer securities (as defined in section 409(*l*)) or used to repay loans used to purchase such securities.

(C) Allocation requirements

The requirements of this subparagraph are met if the portion of the amount transferred which is not allocated under the plan to accounts of participants in the plan year in which the transfer occurs—

(i) is credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

(I) the annual addition (as determined under section 415(c)) attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount.

The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or ⅛ of the amount attributable to the securities acquired. In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities.

(D) Participants

The requirements of this subparagraph are met if at least half of the participants in the qualified plan are participants in the employee stock ownership plan (as of the close of the 1st plan year for which an allocation of the securities is required).

(E) Applicable amount

For purposes of this paragraph, the term ''applicable amount'' means any amount which—

(i) is transferred after March 31, 1985, and before January 1, 1989, or

(ii) is transferred after December 31, 1988, pursuant to a termination which occurs after March 31, 1985, and before January 1, 1989.

(F) No credit or deduction allowed

No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

(G) Amount transferred to include income thereon, etc.

The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements.

(4) Time for payment of tax

For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs.

(d) Increase in tax for failure to establish replacement plan or increase benefits

(1) In general

Subsection (a) shall be applied by substituting ''50 percent'' for ''20 percent'' with respect to any employer reversion from a qualified plan unless—

(A) the employer establishes or maintains a qualified replacement plan, or

(B) the plan provides benefit increases meeting the requirements of paragraph (3).

(2) Qualified replacement plan

For purposes of this subsection, the term ''qualified replacement plan'' means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the ''replacement plan'') with respect to which the following requirements are met:

(A) Participation requirement

At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

(B) Asset transfer requirement

(i) 25 percent cushion

A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

(II) the amount determined under clause (ii).

(ii) Reduction for increase in benefits

The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

(II) takes effect immediately on the termination date.

(iii) Treatment of amount transferred

In the case of the transfer of any amount under clause (i)—

(I) such amount shall not be includible in the gross income of the employer,

(II) no deduction shall be allowable with respect to such transfer, and

(III) such transfer shall not be treated as an employer reversion for purposes of this section.

(C) Allocation requirements

(i) In general

In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

(ii) Coordination with section 415 limitation

If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

(I) such amount shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

(iii) Treatment of income

Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

(iv) Unallocated amounts at termination

If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

(I) such amount shall be allocated to the accounts of participants as of such date, except that any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

(3) Pro rata benefit increases

(A) In general

The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

(ii) take effect immediately on the termination date.

(B) Pro rata increase

For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting ''equal to'' for ''not less than''.

(4) Coordination with other provisions

(A) Limitations

A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

(B) Treatment as employer contributions

Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

(C) 10-year participation requirement

Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

(5) Definitions and special rules

For purposes of this subsection—

(A) Qualified participant

The term ''qualified participant'' means an individual who—

(i) is an active participant,

(ii) is a participant or beneficiary in pay status as of the termination date,

(iii) is a participant not described in clause (i) or (ii)—

(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

(B) Present value

Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

(C) Reallocation of increase

Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

(D) Plans taken into account

For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

(i) 2 or more plans may be treated as 1 plan, or

(ii) a plan of a successor employer may be taken into account.

(E) Special rule for participation requirement

For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414(b), (c), (m), or (*o*) shall be treated as 1 employer.

(6) Subsection not to apply to employer in bankruptcy

This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law.

(Added Pub. L. 99–514, title XI, §1132(a), Oct. 22, 1986, 100 Stat. 2478; amended Pub. L. 100–647, title I, §1011A(f)(1)–(3), (6), (7), title V, §5072(a), title VI, §6069(a), Nov. 10, 1988, 102 Stat. 3478, 3479, 3681, 3704; Pub. L. 101–508, title XII, §§12001, 12002(a), Nov. 5, 1990, 104 Stat. 1388–562; Pub. L. 104–188, title I, §1704(a), Aug. 20, 1996, 110 Stat. 1878; Pub. L. 109–280, title IX, §901(a)(2)(C), Aug. 17, 2006, 120 Stat. 1029; Pub. L. 110–458, title I, §108(i)(3), Dec. 23, 2008, 122 Stat. 5110.)

AMENDMENTS

2008—Subsec. (c)(2)(B)(iii). Pub. L. 110–458 added cl. (iii).

2006—Subsec. (c)(3)(A). Pub. L. 109–280 substituted ''if the requirements of subparagraphs (B), (C), and (D) are met'' for ''if—

''(i) the requirements of subparagraphs (B), (C), and (D) are met, and

''(ii) under the plan, employer securities to which subparagraph (B) applies must, except to the extent necessary to meet the requirements of section 401(a)(28), remain in the plan until distribution to participants in accordance with the provisions of such plan''.

1996—Subsecs. (a), (d). Pub. L. 104–188 provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Sections 12001 and 12002(a) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–508, §12001, which directed the substitution of ''20 percent'' for ''15 percent'' in ''section 4980(a)'' without specifying the Internal Revenue Code of 1986, was executed to subsec. (a) of this section. See 1996 Amendment note above.

Subsec. (d). Pub. L. 101–508, §12002(a), which directed the addition of subsec. (d) to ''section 4980'' without specifying the Internal Revenue Code of 1986, was executed to this section. See 1996 Amendment note above.

1988—Subsec. (a). Pub. L. 100–647, §6069(a), substituted ''15'' for ''10''.

Subsec. (c)(1)(A). Pub. L. 100–647, §1011A(f)(1), substituted ''subtitle A'' for ''this subtitle''.

Subsec. (c)(3)(A). Pub. L. 100–647, §1011A(f)(2), inserted ''or a tax credit employee stock ownership plan (as described in section 409)'' after ''section 4975(e)(7)'' in introductory text, and '', except to the extent necessary to meet the requirements of section 401(a)(28),'' after ''must'' in cl. (ii).

Subsec. (c)(3)(C). Pub. L. 100–647, §1011A(f)(3), struck out ''(by reason of the limitations of section 415)'' after ''not allocated'' in introductory text, and inserted sentence at end relating to minimum amount allocated in year of transfer.

Pub. L. 100–647, §1011A(f)(7), inserted sentence at end relating to dividends on securities held in suspense account.

Subsec. (c)(3)(F), (G). Pub. L. 100–647, §1011A(f)(6), added subpars. (F) and (G).

Subsec. (c)(4). Pub. L. 100–647, §5072(a), added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XII, §12003, Nov. 5, 1990, 104 Stat. 1388–566, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle A (§§12001–12003) of title XII of Pub. L. 101–508, amending this section and sections 1002, 1104, and 1344 of Title 29, Labor] shall apply to reversions occurring after September 30, 1990.

''(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

''(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

''(2) in the case of plans subject to title I [29 U.S.C. 1001 et seq.] (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 1, 1990,

''(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

''(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011A(f)(1)–(3), (6), (7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title V, § 5072(b), Nov. 10, 1988, 102 Stat. 3681, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to reversions after December 31, 1988.''

Pub. L. 100–647, title VI, § 6069(b), Nov. 10, 1988, 102 Stat. 3704, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to reversions occurring on or after October 21, 1988.

''(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any reversion on or after October 21, 1988, pursuant to a plan termination if—

''(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.], a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 21, 1988,

''(B) with respect to plans subject to title I of such Act [29 U.S.C. 1001 et seq.], a notice of intent to reduce future accruals required under section 204(h) of such Act [29 U.S.C. 1054(h)] was provided to participants in connection with the termination before October 21, 1988,

''(C) with respect to plans not subject to title I or IV of such Act, the Board of Directors of the employer approved the termination or the employer took other binding action before October 21, 1988, or

''(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before October 21, 1988, and notice of such order was provided to participants before such date.''

EFFECTIVE DATE

Pub. L. 99–514, title XI, § 1132(c), Oct. 22, 1986, 100 Stat. 2480, as amended by Pub. L. 100–647, title I, § 1011A(f)(4), (5), Nov. 10, 1988, 102 Stat. 3479, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to reversions occurring after December 31, 1985.

''(2) EXCEPTION WHERE TERMINATION DATE OCCURRED BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section shall not apply to any reversion after December 31, 1985, which occurs pursuant to a plan termination where the termination date is before January 1, 1986.

''(B) ELECTION TO HAVE AMENDMENTS APPLY.—A corporation may elect to have the amendments made by this section apply to any reversion after 1985 pursuant to a plan termination occurring before 1986 if such corporation was incorporated in the State of Delaware in March, 1978, and became a parent corporation of the consolidated group on September 19, 1978, pursuant to a merger agreement recorded in the State of Nevada on September 19, 1978.

''(3) TERMINATION DATE.—For purposes of paragraph (2), the term 'termination date' is the date of the termination (within the meaning of section 411(d)(3) of the Internal Revenue Code of 1986) of the plan.

''(4) TRANSITION RULE FOR CERTAIN TERMINATIONS.—

''(A) IN GENERAL.—In the case of a taxpayer to which this paragraph applies, the amendments made by this section shall not apply to any termination occurring before the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986].

''(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to—

''(i) a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma,

''(ii) a corporation incorporated on January 17, 1917, which is located in Coatesville, Pennsylvania,

''(iii) a corporation incorporated on January 23, 1928, which has its principal place of business in New York, New York,

''(iv) a corporation incorporated on April 23, 1956, which has its principal place of business in Dallas, Texas, and

''(v) a corporation incorporated in the State of Nevada, the principal place of business of which is in Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986.

''(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985.''

TRANSFER OF EXCESS ASSETS FROM QUALIFIED PENSION PLAN TO WELFARE BENEFIT PLAN

Pub. L. 101–239, title VII, § 7861(b), Dec. 19, 1989, 103 Stat. 2430, provided that:

''(1) Notwithstanding any other provision of law, in the case of any qualified pension plan and welfare benefit plan described in paragraph (2), the assets of such pension plan in excess of its liabilities may be transferred to such welfare benefit plan upon the termination of such pension plan if such assets are to be used to provide retiree health benefits.

''(2) For purposes of paragraph (1), a qualified pension plan and welfare benefit plan are described in this paragraph if—

''(A) both such plans are jointly administered pursuant to a collective bargaining agreement between the employer maintaining such plans and one or more employee representatives,

''(B) the welfare benefit plan provides retiree health benefits, and

''(C) the qualified pension plan has assets in excess of liabilities (determined on a termination basis) and the welfare benefit plan has assets which are less than the present value of the benefits to be provided under the plan (determined as of the time of termination of the pension plan).

''(3) For purposes of the Internal Revenue Code of 1986, any transfer of assets to which paragraph (1) applies shall be treated as a reversion of such assets to the employer maintaining the plan which is includible in the gross income of such employer and subject to the tax imposed by section 4980 of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the

first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 4980A. Repealed. Pub. L. 105–34, title X, § 1073(a), Aug. 5, 1997, 111 Stat. 948]

Section, added Pub. L. 99–514, title XI, § 1133(a), Oct. 22, 1986, 100 Stat. 2481, § 4981A; renumbered § 4980A and amended Pub. L. 100–647, title I, § 1011A(g)(1)(A), (2)–(6), (9), Nov. 10, 1988, 102 Stat. 3479–3482; Pub. L. 102–318, title V, § 521(b)(42), July 3, 1992, 106 Stat. 313; Pub. L. 104–188, title I, §§ 1401(b)(12), 1452(b), Aug. 20, 1996, 110 Stat. 1789, 1816, related to tax on excess distributions from qualified retirement plans.

EFFECTIVE DATE OF REPEAL

Pub. L. 105–34, title X, § 1073(c), Aug. 5, 1997, 111 Stat. 948, provided that:

''(1) EXCESS DISTRIBUTION TAX REPEAL.—Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall apply to excess distributions received after December 31, 1996.

''(2) EXCESS RETIREMENT ACCUMULATION TAX REPEAL.—The repeal made by subsection (a) with respect to section 4980A(d) of the Internal Revenue Code of 1986 and the amendments made by subsection (b) [amending sections 691, 2013, 2053, and 6018 of this title] shall apply to estates of decedents dying after December 31, 1996.''

§ 4980B. Failure to satisfy continuation coverage requirements of group health plans

(a) General rule

There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the earlier of—

(i) the date such failure is corrected, or

(ii) the date which is 6 months after the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

If a person is liable for tax under subsection (e)(1)(B) by reason of subsection (e)(2)(B) with respect to any failure, the noncompliance period for such person with respect to such failure shall not begin before the 45th day after the written request described in subsection (e)(2)(B) is provided to such person.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to a qualified beneficiary—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such beneficiary shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

(B) Higher minimum tax where violations are more than de minimis

To the extent violations by the employer (or the plan in the case of a multiemployer plan) for any year are more than de minimis, subparagraph (A) shall be applied by substituting ''$15,000'' for ''$2,500'' with respect to the employer (or such plan).

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered exercising reasonable diligence

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

(3) $100 limit on amount of tax for failures on any day with respect to a qualified beneficiary

(A) In general

Except as provided in subparagraph (B), the maximum amount of tax imposed by subsection (a) on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be $100.

(B) Special rule where more than 1 qualified beneficiary

If there is more than 1 qualified beneficiary with respect to the same qualifying event, the maximum amount of tax imposed by subsection (a) on all failures on any day during the noncompliance period with respect to such qualified beneficiaries shall be $200.

(4) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect—

(A) Single employer plans

(i) In general

In the case of failures with respect to plans other than multiemployer plans, the

tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) $500,000.

(ii) Taxable years in the case of certain controlled groups

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(B) Multiemployer plans

(i) In general

In the case of failures with respect to a multiemployer plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 213(d)) directly or through insurance, reimbursement, or otherwise, or

(II) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as 1 plan.

(ii) Special rule for employers required to pay tax

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a multiemployer plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a multiemployer plan.

(C) Special rule for persons providing benefits

In the case of a person described in subsection (e)(1)(B) (and not subsection (e)(1)(A)), the aggregate amount of tax imposed by subsection (a) for failures during a taxable year with respect to all plans shall not exceed $2,000,000.

(5) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Tax not to apply to certain plans

This section shall not apply to—

(1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary occurred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,

(2) any governmental plan (within the meaning of section 414(d)), or

(3) any church plan (within the meaning of section 414(e)).

(e) Liability for tax

(1) In general

Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

(A)(i) In the case of a plan other than a multiemployer plan, the employer.

(ii) In the case of a multiemployer plan, the plan.

(B) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the plan and whose act or failure to act caused (in whole or in part) the failure.

(2) Special rules for persons described in paragraph (1)(B)

(A) No liability unless written agreement

Except in the case of liability resulting from the application of subparagraph (B) of this paragraph, a person described in subparagraph (B) (and not in subparagraph (A)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

(B) Failure to cover qualified beneficiaries where current employees are covered

A person shall be treated as described in paragraph (1)(B) with respect to a qualified beneficiary if—

(i) such person provides coverage under a group health plan for any similarly situated beneficiary under the plan with respect to whom a qualifying event has not occurred, and

(ii) the—

(I) employer or plan administrator, or

(II) in the case of a qualifying event described in subparagraph (C) or (E) of subsection (f)(3) where the person described in clause (i) is the plan administrator, the qualified beneficiary,

submits to such person a written request that such person make available to such qualified beneficiary the same coverage which such person provides to the beneficiary referred to in clause (i).

(f) Continuation coverage requirements of group health plans

(1) In general

A group health plan meets the requirements of this subsection only if the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act)[1]

[1] See References in Text note below.

is not reduced below the coverage provided by the plan as of May 1, 1993, and only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

(2) Continuation coverage

For purposes of paragraph (1), the term ''continuation coverage'' means coverage under the plan which meets the following requirements:

(A) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

(B) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(i) Maximum required period

(I) General rule for terminations and reduced hours

In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

(II) Special rule for multiple qualifying events

If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

(III) Special rule for certain bankruptcy proceedings

In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(IV) General rule for other qualifying events

In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

(V) Special rule for PBGC recipients

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974, notwithstanding subclause (I) or (II), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(VI) Special rule for TAA-eligible individuals

In the case of a qualifying event described in paragraph (3)(B) with respect to a covered employee who is (as of the date that the period of coverage would, but for this subclause or subclause (VII), otherwise terminate under subclause (I) or (II)) a TAA-eligible individual (as defined in paragraph (5)(C)(iv)(II)), the period of coverage shall not terminate by reason of subclause (I) or (II), as the case may be, before the later of the date specified in such subclause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond January 1, 2014.

(VII) Medicare entitlement followed by qualifying event

In the case of a qualifying event described in paragraph (3)(B) that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act, the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this clause before the close of the 36-month period beginning on the date the covered employee became so entitled.

(VIII) Special rule for disability

In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section, any reference in subclause (I) or (II) to 18 months is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months.

(ii) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(iii) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make

timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(iv) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(I) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act), or

(II) in the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D) entitled to benefits under title XVIII of the Social Security Act.

(v) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this section, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act that the qualified beneficiary is no longer disabled.

(C) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(i) shall not exceed 102 percent of the applicable premium for such period, and

(ii) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to ''102 percent'' is deemed a reference to ''150 percent'' for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).

(D) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(E) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(3) Qualifying event

For purposes of this subsection, the term ''qualifying event'' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary—

(A) The death of the covered employee.

(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(C) The divorce or legal separation of the covered employee from the employee's spouse.

(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (g)(1)(D) within one year before or after the date of commencement of the proceeding.

(4) Applicable premium

For purposes of this subsection—

(A) In general

The term ''applicable premium'' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(B) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(i) In general

Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(I) is determined on an actuarial basis, and

(II) takes into account such factors as the Secretary may prescribe in regulations.

(ii) Determination on basis of past cost

If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(iii) Clause (ii) not to apply where significant change

A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

(C) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(5) Election

For purposes of this subsection—

(A) Election period

The term ''election period'' means the period which—

(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(ii) is of at least 60 days' duration, and

(iii) ends not earlier than 60 days after the later of—

(I) the date described in clause (i), or

(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

(B) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (g)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(C) Temporary extension of COBRA election period for certain individuals

(i) In general

In the case of a nonelecting TAA-eligible individual and notwithstanding subparagraph (A), such individual may elect continuation coverage under this subsection during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.

(ii) Commencement of coverage; no reachback

Any continuation coverage elected by a TAA-eligible individual under clause (i) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.

(iii) Preexisting conditions

With respect to an individual who elects continuation coverage pursuant to clause (i), the period—

(I) beginning on the date of the TAA-related loss of coverage, and

(II) ending on the first day of the 60-day election period described in clause (i),

shall be disregarded for purposes of determining the 63-day periods referred to in section 9801(c)(2), section 701(c)(2) of the Employee Retirement Income Security Act of 1974, and section 2701(c)(2)[1] of the Public Health Service Act.

(iv) Definitions

For purposes of this subsection:

(I) Nonelecting TAA-eligible individual

The term ''nonelecting TAA-eligible individual'' means a TAA-eligible individual who has a TAA-related loss of coverage and did not elect continuation coverage under this subsection during the TAA-related election period.

(II) TAA-eligible individual

The term ''TAA-eligible individual'' means an eligible TAA recipient (as defined in paragraph (2) of section 35(c)) and an eligible alternative TAA recipient (as defined in paragraph (3) of such section).

(III) TAA-related election period

The term ''TAA-related election period'' means, with respect to a TAA-related loss of coverage, the 60-day election period under this subsection which is a direct consequence of such loss.

(IV) TAA-related loss of coverage

The term ''TAA-related loss of coverage'' means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

(6) Notice requirement

In accordance with regulations prescribed by the Secretary—

(A) The group health plan shall provide, at the time of commencement of coverage

under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event.

(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at any time during the first 60 days of continuation coverage under this section is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled.

(D) The plan administrator shall notify—

(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator. For purposes of subparagraph (D), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(7) Covered employee

For purposes of this subsection, the term ''covered employee'' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)).

(8) Optional extension of required periods

A group health plan shall not be treated as failing to meet the requirements of this subsection solely because the plan provides both—

(A) that the period of extended coverage referred to in paragraph (2)(B) commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under paragraph (6)(B) commences with the date of the loss of coverage.

(g) Definitions

For purposes of this section—

(1) Qualified beneficiary

(A) In general

The term ''qualified beneficiary'' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in subsection (f)(3)(B), the term ''qualified beneficiary'' includes the covered employee.

(C) Exception for nonresident aliens

Notwithstanding subparagraphs (A) and (B), the term ''qualified beneficiary'' does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

(D) Special rule for retirees and widows

In the case of a qualifying event described in subsection (f)(3)(F), the term ''qualified beneficiary'' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the covered employee, or

(iii) as the surviving spouse of the covered employee.

(2) Group health plan

The term ''group health plan'' has the meaning given such term by section 5000(b)(1). Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).

(3) Plan administrator

The term ''plan administrator'' has the meaning given the term ''administrator'' by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

(4) Correction

A failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the qualified beneficiary is placed in a financial position which is as good as such beneficiary would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the qualified beneficiary shall be treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure first occurred.

(Added Pub. L. 100–647, title III, §3011(a), Nov. 10, 1988, 102 Stat. 3616; amended Pub. L. 101–239, title VI, §§6202(b)(3)(B), 6701(a)–(c), title VII, §§7862(c)(2)(B), (3)(C), (4)(B), (5)(A), 7891(d)(1)(B), (2)(A), Dec. 19, 1989, 103 Stat. 2233, 2294, 2295, 2432, 2433, 2446; Pub. L. 101–508, title XI, §11702(f), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 103–66, title XIII, §13422(a), Aug. 10, 1993, 107 Stat. 566; Pub. L. 104–188, title I, §1704(g)(1)(A), (t)(21), Aug. 20, 1996, 110 Stat. 1880, 1888; Pub. L. 104–191, title III, §321(d)(1), title IV, §421(c), Aug. 21, 1996, 110 Stat. 2058, 2088; Pub. L. 107–210, div. A, title II, §203(e)(3), Aug. 6, 2002, 116 Stat. 971; Pub. L. 111–5, div. B, title I, §1899F(b), Feb. 17, 2009, 123 Stat. 429; Pub. L. 111–344, title I, §116(b), Dec. 29, 2010, 124 Stat. 3616; Pub. L. 112–40, title II, §243(a)(3), (4), Oct. 21, 2011, 125 Stat. 420.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (f)(1), does not contain a section 2162. The reference probably should be to section 1928 of the Social Security Act, which is classified to section 1396s of Title 42, The Public Health and Welfare, and which relates to pediatric vaccines.

The Social Security Act, referred to in subsec. (f)(2)(B)(i)(IV), (VII), (VIII), (iv)(II), (v), (3)(D), (6)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§401 et seq.), XVI (§1381 et seq.), and XVIII (§1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(2)(B)(i)(V), (iv)(I), (5)(C)(iii), and (g)(3), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832. Part 7 of subtitle B of title I of the Act is classified generally to part 7 (§1181 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Sections 3(16)(A) and 701(c)(2) of the Act are classified to sections 1002(16)(A) and 1181(c)(2), respectively, of Title 29. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Public Health Service Act, referred to in subsec. (f)(2)(B)(iv)(I), is act July 1, 1944, ch. 373, 58 Stat. 682. Title XXVII of the Act is classified generally to subchapter XXV (§300gg et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 2701 of the Public Health Service Act, referred to in subsec. (f)(5)(C)(iii), was classified to section 300gg of Title 42, The Public Health and Welfare, was renumbered section 2704, effective for plan years beginning on or after Jan. 1, 2014, with certain exceptions, and amended, by Pub. L. 111–148, title I, §§1201(2), 1563(c)(1), formerly §1562(c)(1), title X, §10107(b)(1), Mar. 23, 2010, 124 Stat. 154, 264, 911, and was transferred to section 300gg–3 of Title 42. A new section 2701, related to fair health insurance premiums, was added and amended by Pub. L. 111–148, title I, §1201(4), title X, §10103(a), Mar. 23, 2010, 124 Stat. 155, 892, and is classified to section 300gg of Title 42.

AMENDMENTS

2011—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 112–40 substituted ''January 1, 2014'' for ''February 12, 2011''.

2010—Subsec. (f)(2)(B)(i)(V), (VI). Pub. L. 111–344 substituted ''February 12, 2011'' for ''December 31, 2010''.

2009—Subsec. (f)(2)(B)(i)(V). Pub. L. 111–5, §1899F(b)(2), added subcl. (V). Former subcl. (V) redesignated (VII).

Subsec. (f)(2)(B)(i)(VI). Pub. L. 111–5, §1899F(b)(2), added subcl. (VI). Former subcl. (VI) redesignated (VIII).

Pub. L. 111–5, §1899F(b)(1), designated concluding provisions as subcl. (VI) and inserted heading.

Subsec. (f)(2)(B)(i)(VII), (VIII). Pub. L. 111–5, §1899F(b)(2), designated subcls. (V) and (VI) as (VII) and (VIII), respectively.

2002—Subsec. (f)(5)(C). Pub. L. 107–210 added subpar. (C).

1996—Subsec. (f)(2)(B)(i). Pub. L. 104–191, §421(c)(1)(A), in concluding provisions, substituted ''at any time during the first 60 days of continuation coverage under this section'' for ''at the time of a qualifying event described in paragraph (3)(B)'', struck out ''with respect to such event'' after ''(II) to 18 months'', and inserted ''(with respect to all qualified beneficiaries)'' after ''29 months''.

Pub. L. 104–188, §1704(t)(21), made technical amendment to directory language of Pub. L. 101–239, §6701(a)(1). See 1989 Amendment note below.

Subsec. (f)(2)(B)(i)(V). Pub. L. 104–188, §1704(g)(1)(A), substituted ''Medicare entitlement followed by qualifying event'' for ''Qualifying event involving medicare entitlement'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act.''

Subsec. (f)(2)(B)(iv)(I). Pub. L. 104–191, §421(c)(1)(B), inserted ''(other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of this title, part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or title XXVII of the Public Health Service Act)'' before '', or''.

Subsec. (f)(2)(B)(v). Pub. L. 104–191, §421(c)(1)(C), substituted ''at any time during the first 60 days of continuation coverage under this section'' for ''at the time of a qualifying event described in paragraph (3)(B)''.

Subsec. (f)(6)(C). Pub. L. 104–191, §421(c)(2), substituted ''at any time during the first 60 days of con-

tinuation coverage under this section'' for ''at the time of a qualifying event described in paragraph (3)(B)''.

Subsec. (g)(1)(A). Pub. L. 104–191, § 421(c)(3), inserted at end ''Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this section.''

Subsec. (g)(2). Pub. L. 104–191, § 321(d)(1), inserted at end ''Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c)).''

1993—Subsec. (f)(1). Pub. L. 103–66 inserted ''the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) is not reduced below the coverage provided by the plan as of May 1, 1993, and only if'' after ''only if''.

1990—Subsec. (d)(1). Pub. L. 101–508 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''any failure of a group health plan to meet the requirements of subsection (f) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,''.

1989—Subsec. (f)(2)(B)(i). Pub. L. 101–239, § 6701(a)(1), as amended by Pub. L. 104–188, § 1704(t)(21), inserted at end ''In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B), any reference in subclause (I) or (II) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under paragraph (6)(C) before the end of such 18 months.''

Subsec. (f)(2)(B)(i)(V). Pub. L. 101–239, § 7862(c)(5)(A), added subcl. (V).

Subsec. (f)(2)(B)(iv). Pub. L. 101–239, § 7862(c)(3)(C), substituted ''entitlement'' for ''eligibility'' in heading and inserted ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in subcl. (I).

Subsec. (f)(2)(B)(v). Pub. L. 101–239, § 6701(a)(2), added cl. (v).

Subsec. (f)(2)(C). Pub. L. 101–239, § 7862(c)(4)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: ''If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.''

Pub. L. 101–239, § 6701(b), inserted at end ''In the case of an individual described in the last sentence of subparagraph (B)(i), any reference in clause (i) of this subparagraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in subclause (I) or (II) of subparagraph (B)(i).''

Subsec. (f)(6). Pub. L. 101–239, § 7891(d)(1)(B)(ii), inserted after and below subpar. (D) the following new flush sentence ''The requirements of subparagraph (B) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (3)(B) if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.''

Pub. L. 101–239, § 7891(d)(1)(B)(i)(II), inserted ''(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)'' after ''14 days'' in last sentence.

Subsec. (f)(6)(B). Pub. L. 101–239, § 7891(d)(1)(B)(i)(I), inserted ''(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)'' after ''30 days''.

Subsec. (f)(6)(C). Pub. L. 101–239, § 6701(c), inserted before period at end ''and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in paragraph (3)(B) is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days of the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled''.

Subsec. (f)(7). Pub. L. 101–239, § 7862(c)(2)(B), substituted ''the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))'' for ''the individual's employment or previous employment with an employer''.

Subsec. (f)(8). Pub. L. 101–239, § 7891(d)(2)(A), added par. (8).

Subsec. (g)(2). Pub. L. 101–239, § 6202(b)(3)(B), substituted ''section 5000(b)(1)'' for ''section 162(i)''.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112–40, title II, § 243(b), Oct. 21, 2011, 125 Stat. 420, provided that: ''The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date which is 30 days after the date of the enactment of this Act [Oct. 21, 2011].''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–344, title I, § 116(d), Dec. 29, 2010, 124 Stat. 3616, provided that: ''The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after December 31, 2010.''

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by Pub. L. 111–5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111–5, div. B, title I, § 1899F(d), Feb. 17, 2009, 123 Stat. 430, provided that: ''The amendments made by this section [amending this section, section 1162 of Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to periods of coverage which would (without regard to the amendments made by this section) end on or after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–210 applicable to petitions for certification filed under part 2 or 3 of subchapter II of chapter 12 of Title 19, Customs Duties, on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107–210, set out as a note preceding section 2271 of Title 19.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 321(d)(1) of Pub. L. 104–191 applicable to contracts issued after Dec. 31, 1996, see section 321(f) of Pub. L. 104–191, set out as an Effective Date note under section 7702B of this title.

Pub. L. 104–191, title IV, § 421(d), Aug. 21, 1996, 110 Stat. 2089, provided that: ''The amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb–2, 300bb–6, and 300bb–8 of Title 42, The Public Health and Welfare] shall become effective on January 1, 1997, regardless of whether the qualifying event occurred before, on, or after such date.''

Pub. L. 104–188, title I, § 1704(g)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: ''The amendments made by this subsection [amending this section, section 1162 of

Title 29, Labor, and section 300bb–2 of Title 42, The Public Health and Welfare] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–66, title XIII, §13422(b), Aug. 10, 1993, 107 Stat. 566, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(3)(B) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of this title.

Pub. L. 101–239, title VI, §6701(d), Dec. 19, 1989, 103 Stat. 2295, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.''

Pub. L. 101–239, title VII, §7862(c)(2)(C), Dec. 19, 1989, 103 Stat. 2432, provided that: ''The amendments made by this paragraph [amending this section and section 1167 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989.''

Amendment by section 7862(c)(3)(C) of Pub. L. 101–239 applicable to (i) qualifying events occurring after Dec. 31, 1989, and (ii) in the case of qualified beneficiaries who elected continuation coverage after Dec. 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such), see section 7862(c)(3)(D) of Pub. L. 101–239, set out as a note under section 162 of this title.

Pub. L. 101–239, title VII, §7862(c)(4)(C), Dec. 19, 1989, 103 Stat. 2433, provided that: ''The amendments made by this paragraph [amending this section and section 1162 of Title 29, Labor] shall apply to plan years beginning after December 31, 1989.''

Pub. L. 101–239, title VII, §7862(c)(5)(C), Dec. 19, 1989, 103 Stat. 2433, provided that: ''The amendments made by this paragraph [amending this section and section 1162 of Title 29] shall apply to plan years beginning after December 31, 1989.''

Pub. L. 101–239, title VII, §7891(d)(1)(C), Dec. 19, 1989, 103 Stat. 2446, provided that: ''The amendments made by this paragraph [amending this section and section 1166 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990.''

Pub. L. 101–239, title VII, §7891(d)(2)(C), Dec. 19, 1989, 103 Stat. 2447, provided that: ''The amendments made by this paragraph [amending this section and section 1167 of Title 29] shall apply with respect to plan years beginning on or after January 1, 1990.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as an Effective Date of 1988 Amendment note under section 162 of this title.

CONSTRUCTION OF 2002 AMENDMENT

Nothing in amendment by Pub. L. 107–210, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107–210, set out as a note under section 2918 of Title 29, Labor.

NOTIFICATION OF CHANGES IN CONTINUATION COVERAGE

Pub. L. 104–191, title IV, §421(e), Aug. 21, 1996, 110 Stat. 2089, provided that: ''Not later than November 1, 1996, each group health plan (covered under title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1161 et seq.], and section 4980B(f) of the Internal Revenue Code of 1986) shall notify each qualified beneficiary who has elected continuation coverage under such title, part or section of the amendments made by this section [amending this section, sections 1162, 1166, and 1167 of Title 29, Labor, and sections 300bb–2, 300bb–6, and 300bb–8 of Title 42, The Public Health and Welfare].''

§ 4980C. Requirements for issuers of qualified long-term care insurance contracts

(a) General rule

There is hereby imposed on any person failing to meet the requirements of subsection (c) or (d) a tax in the amount determined under subsection (b).

(b) Amount

(1) In general

The amount of the tax imposed by subsection (a) shall be $100 per insured for each day any requirement of subsection (c) or (d) is not met with respect to each qualified long-term care insurance contract.

(2) Waiver

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that payment of the tax would be excessive relative to the failure involved.

(c) Responsibilities

The requirements of this subsection are as follows:

(1) Requirements of model provisions

(A) Model regulation

The following requirements of the model regulation must be met:

(i) Section 13 (relating to application forms and replacement coverage).

(ii) Section 14 (relating to reporting requirements), except that the issuer shall also report at least annually the number of claims denied during the reporting period for each class of business (expressed as a percentage of claims denied), other than claims denied for failure to meet the waiting period or because of any applicable preexisting condition.

(iii) Section 20 (relating to filing requirements for marketing).

(iv) Section 21 (relating to standards for marketing), including inaccurate completion of medical histories, other than sections 21C(1) and 21C(6) thereof, except that—

(I) in addition to such requirements, no person shall, in selling or offering to sell a qualified long-term care insurance contract, misrepresent a material fact; and

(II) no such requirements shall include a requirement to inquire or identify

whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance.

(v) Section 22 (relating to appropriateness of recommended purchase).

(vi) Section 24 (relating to standard format outline of coverage).

(vii) Section 25 (relating to requirement to deliver shopper's guide).

(B) Model Act

The following requirements of the model Act must be met:

(i) Section 6F (relating to right to return), except that such section shall also apply to denials of applications and any refund shall be made within 30 days of the return or denial.

(ii) Section 6G (relating to outline of coverage).

(iii) Section 6H (relating to requirements for certificates under group plans).

(iv) Section 6I (relating to policy summary).

(v) Section 6J (relating to monthly reports on accelerated death benefits).

(vi) Section 7 (relating to incontestability period).

(C) Definitions

For purposes of this paragraph, the terms ''model regulation'' and ''model Act'' have the meanings given such terms by section 7702B(g)(2)(B).

(2) Delivery of policy

If an application for a qualified long-term care insurance contract (or for a certificate under such a contract for a group) is approved, the issuer shall deliver to the applicant (or policyholder or certificateholder) the contract (or certificate) of insurance not later than 30 days after the date of the approval.

(3) Information on denials of claims

If a claim under a qualified long-term care insurance contract is denied, the issuer shall, within 60 days of the date of a written request by the policyholder or certificateholder (or representative)—

(A) provide a written explanation of the reasons for the denial, and

(B) make available all information directly relating to such denial.

(d) Disclosure

The requirements of this subsection are met if the issuer of a long-term care insurance policy discloses in such policy and in the outline of coverage required under subsection (c)(1)(B)(ii) that the policy is intended to be a qualified long-term care insurance contract under section 7702B(b).

(e) Qualified long-term care insurance contract defined

For purposes of this section, the term ''qualified long-term care insurance contract'' has the meaning given such term by section 7702B.

(f) Coordination with State requirements

If a State imposes any requirement which is more stringent than the analogous requirement imposed by this section or section 7702B(g), the requirement imposed by this section or section 7702B(g) shall be treated as met if the more stringent State requirement is met.

(Added Pub. L. 104–191, title III, § 326(a), Aug. 21, 1996, 110 Stat. 2065.)

EFFECTIVE DATE

Pub. L. 104–191, title III, § 327, Aug. 21, 1996, 110 Stat. 2066, provided that:

''(a) IN GENERAL.—The provisions of, and amendments made by, this part [part II (§§ 325–327) of subtitle C of title III of Pub. L. 104–191, enacting this section and amending section 7702B of this title] shall apply to contracts issued after December 31, 1996. The provisions of section 321(f) [set out as an Effective Date note under section 7702B of this title] (relating to transition rule) shall apply to such contracts.

''(b) ISSUERS.—The amendments made by section 326 [enacting this section] shall apply to actions taken after December 31, 1996.''

§ 4980D. Failure to meet certain group health plan requirements

(a) General rule

There is hereby imposed a tax on any failure of a group health plan to meet the requirements of chapter 100 (relating to group health plan requirements).

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period—

(A) beginning on the date such failure first occurs, and

(B) ending on the date such failure is corrected.

(3) Minimum tax for noncompliance period where failure discovered after notice of examination

Notwithstanding paragraphs (1) and (2) of subsection (c)—

(A) In general

In the case of 1 or more failures with respect to an individual—

(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such individual shall not be less than the lesser of $2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

(B) Higher minimum tax where violations are more than de minimis

To the extent violations for which any person is liable under subsection (e) for any

year are more than de minimis, subparagraph (A) shall be applied by substituting ''$15,000'' for ''$2,500'' with respect to such person.

(C) Exception for church plans

This paragraph shall not apply to any failure under a church plan (as defined in section 414(e)).

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered exercising reasonable diligence

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such tax did not know, and exercising reasonable diligence would not have known, that such failure existed.

(2) Tax not to apply to failures corrected within certain periods

No tax shall be imposed by subsection (a) on any failure if—

(A) such failure was due to reasonable cause and not to willful neglect, and

(B)(i) in the case of a plan other than a church plan (as defined in section 414(e)), such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such tax knew, or exercising reasonable diligence would have known, that such failure existed, and

(ii) in the case of a church plan (as so defined), such failure is corrected before the close of the correction period (determined under the rules of section 414(e)(4)(C)).

(3) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect—

(A) Single employer plans

(i) In general

In the case of failures with respect to plans other than specified multiple employer health plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) $500,000.

(ii) Taxable years in the case of certain controlled groups

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(B) Specified multiple employer health plans

(i) In general

In the case of failures with respect to a specified multiple employer health plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 9832(d)(3)) directly or through insurance, reimbursement, or otherwise, or

(II) $500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as one plan.

(ii) Special rule for employers required to pay tax

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a specified multiple employer health plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a specified multiple employer health plan.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Tax not to apply to certain insured small employer plans

(1) In general

In the case of a group health plan of a small employer which provides health insurance coverage solely through a contract with a health insurance issuer, no tax shall be imposed by this section on the employer on any failure (other than a failure attributable to section 9811) which is solely because of the health insurance coverage offered by such issuer.

(2) Small employer

(A) In general

For purposes of paragraph (1), the term ''small employer'' means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as one employer.

(B) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) Predecessors

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(3) Health insurance coverage; health insurance issuer

For purposes of paragraph (1), the terms ''health insurance coverage'' and ''health insurance issuer'' have the respective meanings given such terms by section 9832.

(e) Liability for tax

The following shall be liable for the tax imposed by subsection (a) on a failure:

(1) Except as otherwise provided in this subsection, the employer.

(2) In the case of a multiemployer plan, the plan.

(3) In the case of a failure under section 9803 (relating to guaranteed renewability) with respect to a plan described in subsection (f)(2)(B), the plan.

(f) Definitions

For purposes of this section—

(1) Group health plan

The term ''group health plan'' has the meaning given such term by section 9832(a).

(2) Specified multiple employer health plan

The term ''specified multiple employer health plan'' means a group health plan which is—

(A) any multiemployer plan, or

(B) any multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section).

(3) Correction

A failure of a group health plan shall be treated as corrected if—

(A) such failure is retroactively undone to the extent possible, and

(B) the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had such failure not occurred.

(Added Pub. L. 104–191, title IV, § 402(a), Aug. 21, 1996, 110 Stat. 2084; amended Pub. L. 105–34, title XV, § 1531(b)(2), Aug. 5, 1997, 111 Stat. 1085; Pub. L. 109–135, title IV, § 412(ww), Dec. 21, 2005, 119 Stat. 2640.)

REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(2)(B), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (f)(2)(B), is the date of enactment of Pub. L. 104–191, which was approved Aug. 21, 1996.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–135 substituted ''plan requirements'' for ''plans requirements''.

1997—Subsec. (a). Pub. L. 105–34, § 1531(b)(2)(A), substituted ''plans'' for ''plan portability, access, and renewability''.

Subsec. (c)(3)(B)(i)(I). Pub. L. 105–34, § 1531(b)(2)(B), substituted ''9832(d)(3)'' for ''9805(d)(3)''.

Subsec. (d)(1). Pub. L. 105–34, § 1531(b)(2)(C), inserted ''(other than a failure attributable to section 9811)'' after ''on any failure''.

Subsec. (d)(3). Pub. L. 105–34, § 1531(b)(2)(D), substituted ''section 9832'' for ''section 9805''.

Subsec. (f)(1). Pub. L. 105–34, § 1531(b)(2)(E), substituted ''section 9832(a)'' for ''section 9805(a)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XV, § 1531(c), Aug. 5, 1997, 111 Stat. 1085, provided that: ''The amendments made by this section [enacting sections 9811 and 9812 of this title, amending this section and sections 9801 and 9831 of this title, and renumbering sections 9804 to 9806 of this title as sections 9831 to 9833 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.''

EFFECTIVE DATE

Pub. L. 104–191, title IV, § 402(c), Aug. 21, 1996, 110 Stat. 2087, provided that: ''The amendments made by this section [enacting this section] shall apply to failures under chapter 100 of the Internal Revenue Code of 1986 (as added by section 401 of this Act).''

§ 4980E. Failure of employer to make comparable Archer MSA contributions

(a) General rule

In the case of an employer who makes a contribution to the Archer MSA of any employee with respect to coverage under a high deductible health plan of the employer during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to Archer MSAs of employees for taxable years of such employees ending with or within such calendar year.

(c) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

(d) Employer required to make comparable MSA contributions for all participating employees

(1) In general

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the Archer MSAs of all comparable participating employees for each coverage period during such calendar year.

(2) Comparable contributions

(A) In general

For purposes of paragraph (1), the term ''comparable contributions'' means contributions—

(i) which are the same amount, or

(ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

(B) Part-year employees

In the case of an employee who is employed by the employer for only a portion of

the calendar year, a contribution to the Archer MSA of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

(3) Comparable participating employees

For purposes of paragraph (1), the term ''comparable participating employees'' means all employees—

(A) who are eligible individuals covered under any high deductible health plan of the employer, and

(B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

(4) Part-time employees

(A) In general

Paragraph (3) shall be applied separately with respect to part-time employees and other employees.

(B) Part-time employee

For purposes of subparagraph (A), the term ''part-time employee'' means any employee who is customarily employed for fewer than 30 hours per week.

(e) Controlled groups

For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 employer.

(f) Definitions

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220.

(Added Pub. L. 104–191, title III, §301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049; amended Pub. L. 106–554, §1(a)(7) [title II, §202(a)(8), (b)(2)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A–629; Pub. L. 107–147, title IV, §417(17)(A), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Pub. L. 107–147 substituted ''Archer MSA contributions'' for ''medical savings account contributions'' in section catchline.

2000—Subsec. (a). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(8)], substituted ''Archer MSA'' for ''medical savings account''.

Subsecs. (b), (d)(1). Pub. L. 106–554, §1(a)(7) [title II, §202(b)(2)(D)], substituted ''Archer MSAs'' for ''medical savings accounts''.

Subsec. (d)(2)(B). Pub. L. 106–554, §1(a)(7) [title II, §202(a)(8)], substituted ''Archer MSA'' for ''medical savings account''.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104–191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

§ 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements

(a) Imposition of tax

There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) Amount of tax

(1) In general

The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period

For purposes of this section, the term ''noncompliance period'' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

(c) Limitations on amount of tax

(1) Tax not to apply where failure not discovered and reasonable diligence exercised

No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

(2) Tax not to apply to failures corrected within 30 days

No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Overall limitation for unintentional failures

(A) In general

If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

(B) Taxable years in the case of certain controlled groups

For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(4) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the

Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

(d) Liability for tax

The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) Notice requirements for plans significantly reducing benefit accruals

(1) In general

If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) Notice

The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Timing of notice

Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Designees

Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) Notice before adoption of amendment

A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(f) Definitions and special rules

For purposes of this section—

(1) Applicable individual

The term ''applicable individual'' means, with respect to any plan amendment—

(A) each participant in the plan, and

(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(2) Applicable pension plan

The term ''applicable pension plan'' means—

(A) any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or

(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

(3) Early retirement

A plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of reducing the rate of future benefit accrual.

(g) New technologies

The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

(Added Pub. L. 107–16, title VI, § 659(a)(1), June 7, 2001, 115 Stat. 137; amended Pub. L. 107–147, title IV, § 411(u)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title V, § 502(c)(2), Aug. 17, 2006, 120 Stat. 941.)

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–280 inserted ''and to each employer who has an obligation to contribute to the plan'' before period at end.

2002—Subsec. (e)(1). Pub. L. 107–147, § 411(u)(1)(A), substituted ''the notice described in paragraph (2)'' for ''written notice''.

Subsec. (f)(2)(A). Pub. L. 107–147, § 411(u)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''any defined benefit plan, or''.

Subsec. (f)(3). Pub. L. 107–147, § 411(u)(1)(C), struck out ''significantly'' before ''reduces'' and before ''reducing''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title V, § 502(d), Aug. 17, 2006, 120 Stat. 941, provided that: ''The amendments made by this section [amending this section and sections 1021, 1054, and 1132 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Pub. L. 107–16, title VI, § 659(c), June 7, 2001, 115 Stat. 141, as amended by Pub. L. 107–147, title IV, § 411(u)(3), Mar. 9, 2002, 116 Stat. 52, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1054 of Title 29, Labor] shall apply to plan amendments taking

effect on or after the date of the enactment of this Act [June 7, 2001].

''(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986, and section 204(h) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(h)], as added by the amendments made by this section, a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

''(3) SPECIAL NOTICE RULE.—

''(A) IN GENERAL.—The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

''(B) REASONABLE NOTICE.—The amendments made by this section shall not apply to any plan amendment taking effect on or after the date of the enactment of this Act if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (and their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment.''

§ 4980G. Failure of employer to make comparable health savings account contributions

(a) General rule

In the case of an employer who makes a contribution to the health savings account of any employee during a calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (b) for such calendar year.

(b) Rules and requirements

Rules and requirements similar to the rules and requirements of section 4980E shall apply for purposes of this section.

(c) Regulations

The Secretary shall issue regulations to carry out the purposes of this section, including regulations providing special rules for employers who make contributions to Archer MSAs and health savings accounts during the calendar year.

(d) Exception

For purposes of applying section 4980E to a contribution to a health savings account of an employee who is not a highly compensated employee (as defined in section 414(q)), highly compensated employees shall not be treated as comparable participating employees.

(Added Pub. L. 108–173, title XII, § 1201(d)(4)(A), Dec. 8, 2003, 117 Stat. 2478; amended Pub. L. 109–432, div. A, title III, § 306(a), Dec. 20, 2006, 120 Stat. 2951.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–432 added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title III, § 306(b), Dec. 20, 2006, 120 Stat. 2951, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108–173, set out as an Effective Date of 2003 Amendment note under section 62 of this title.

§ 4980H. Shared responsibility for employers regarding health coverage

(a) Large employers not offering health coverage

If—

(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(b) Large employers offering coverage with employees who qualify for premium tax credits or cost-sharing reductions

(1) In general

If—

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of $3,000.

(2) Overall limitation

The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(c) Definitions and special rules

For purposes of this section—

(1) Applicable payment amount

The term ''applicable payment amount'' means, with respect to any month, 1/12 of $2,000.

(2) Applicable large employer

(A) In general

The term ''applicable large employer'' means, with respect to a calendar year, an

employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

(B) Exemption for certain employers

(i) In general

An employer shall not be considered to employ more than 50 full-time employees if—

(I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

(ii) Definition of seasonal workers

The term ''seasonal worker'' means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) Rules for determining employer size

For purposes of this paragraph—

(i) Application of aggregation rule for employers

All persons treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) Employers not in existence in preceding year

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) Predecessors

Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) Application of employer size to assessable penalties

(i) In general

The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

(ii) Aggregation

In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II)[1] shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) Full-time equivalents treated as full-time employees

Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(3) Applicable premium tax credit and cost-sharing reduction

The term ''applicable premium tax credit and cost-sharing reduction'' means—

(A) any premium tax credit allowed under section 36B,

(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

(C) any advance payment of such credit or reduction under section 1412 of such Act.

(4) Full-time employee

(A) In general

The term ''full-time employee'' means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) Hours of service

The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) Inflation adjustment

(A) In general

In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) Rounding

If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

(6) Other definitions

Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

(7) Tax nondeductible

For denial of deduction for the tax imposed by this section, see section 275(a)(6).

[1] So in original. Probably means subclause (I) or (II) of clause (i).

(d) Administration and procedure

(1) In general

Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) Time for payment

The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

(3) Coordination with credits, etc.

The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

(Added and amended Pub. L. 111–148, title I, §1513(a), title X, §§10106(e)–(f)(2), 10108(i)(1)(A), Mar. 23, 2010, 124 Stat. 253, 910, 914; Pub. L. 111–152, title I, §1003, Mar. 30, 2010, 124 Stat. 1033; Pub. L. 112–10, div. B, title VIII, §1858(b)(4), Apr. 15, 2011, 125 Stat. 169.)

REFERENCES IN TEXT

The Patient Protection and Affordable Care Act, referred to in subsecs. (a)(2), (b)(1)(B), and (c)(3)(B), (C), (5)(A)(ii), (6), is Pub. L. 111–148, Mar. 23, 2010, 124 Stat. 119. Sections 1302(c)(4), 1402, 1411, and 1412 of the Act are classified to sections 18022(c)(4), 18071, 18081, and 18082, respectively, of Title 42, The Public Health and Welfare. Section 10108 of the Act enacted former section 139D of this title and section 18101 of Title 42, amended sections 36B, 162, 4980H, 6056, and 6724 of this title and section 218b of Title 29, Labor, and enacted provisions set out as notes under sections 36B, 162, 4980H, and 6056 of this title and former section 139D of this title. For complete classification of this Act to the Code, see Short Title note set out under section 18001 of Title 42 and Tables.

AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 112–10 struck out par. (3). Text read as follows: ''No assessable payment shall be imposed under paragraph (1) for any month with respect to any employee to whom the employer provides a free choice voucher under section 10108 of the Patient Protection and Affordable Care Act for such month.''

2010—Subsec. (b). Pub. L. 111–152, §1003(d), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to large employers with enrollment waiting periods exceeding 60 days.

Pub. L. 111–148, §10106(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to large employers with enrollment waiting periods exceeding 30 days.

Subsec. (c). Pub. L. 111–152, §1003(d), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (c)(1). Pub. L. 111–152, §1003(b)(1), substituted ''an amount equal to 1/12 of $3,000'' for ''400 percent of the applicable payment amount'' in concluding provisions.

Subsec. (c)(3). Pub. L. 111–148, §10108(i)(1)(A), added par. (3).

Subsec. (d). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 111–152, §1003(b)(2), substituted ''$2,000'' for ''$750''.

Subsec. (d)(2)(D). Pub. L. 111–152, §1003(a), amended subpar. (D) generally. Prior to amendment, text read as follows: ''In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

''(i) subparagraph (A) shall be applied by substituting 'who employed an average of at least 5 full-time employees on business days during the preceding calendar year and whose annual payroll expenses exceed $250,000 for such preceding calendar year' for 'who employed an average of at least 50 full-time employees on business days during the preceding calendar year', and

''(ii) subparagraph (B) shall be applied by substituting '5' for '50'.''

Pub. L. 111–148, §10106(f)(2), added subpar. (D).

Subsec. (d)(2)(E). Pub. L. 111–152, §1003(c), added subpar. (E).

Subsec. (d)(4)(A). Pub. L. 111–148, §10106(f)(1), inserted '', with respect to any month,'' after ''means''.

Subsec. (d)(5)(A). Pub. L. 111–152, §1003(b)(3), substituted ''subsection (b) and paragraph (1)'' for ''subsection (b)(2) and (d)(1)'' in introductory provisions.

Subsec. (e). Pub. L. 111–152, §1003(d), redesignated subsec. (e) as (d).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10106(f)(3), Mar. 23, 2010, 124 Stat. 911, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to months beginning after December 31, 2013.''

Pub. L. 111–148, title X, §10108(i)(1)(B), Mar. 23, 2010, 124 Stat. 914, provided that: ''The amendment made by this paragraph [amending this section] shall apply to months beginning after December 31, 2013.''

EFFECTIVE DATE

Pub. L. 111–148, title I, §1513(d), Mar. 23, 2010, 124 Stat. 256, provided that: ''The amendments made by this section [enacting this section] shall apply to months beginning after December 31, 2013.''

§ 4980I. Excise tax on high cost employer-sponsored health coverage

(a) Imposition of tax

If—

(1) an employee is covered under any applicable employer-sponsored coverage of an employer at any time during a taxable period, and

(2) there is any excess benefit with respect to the coverage,

there is hereby imposed a tax equal to 40 percent of the excess benefit.

(b) Excess benefit

For purposes of this section—

(1) In general

The term ''excess benefit'' means, with respect to any applicable employer-sponsored coverage made available by an employer to an employee during any taxable period, the sum of the excess amounts determined under paragraph (2) for months during the taxable period.

(2) Monthly excess amount

The excess amount determined under this paragraph for any month is the excess (if any) of—

(A) the aggregate cost of the applicable employer-sponsored coverage of the employee for the month, over

(B) an amount equal to 1/12 of the annual limitation under paragraph (3) for the calendar year in which the month occurs.

(3) Annual limitation

For purposes of this subsection—

(A) In general

The annual limitation under this paragraph for any calendar year is the dollar limit determined under subparagraph (C) for the calendar year.

(B) Applicable annual limitation

(i) In general

Except as provided in clause (ii), the annual limitation which applies for any month shall be determined on the basis of the type of coverage (as determined under subsection (f)(1)) provided to the employee by the employer as of the beginning of the month.

(ii) Multiemployer plan coverage

Any coverage provided under a multiemployer plan (as defined in section 414(f)) shall be treated as coverage other than self-only coverage.

(C) Applicable dollar limit

(i) 2018

In the case of 2018, the dollar limit under this subparagraph is—

(I) in the case of an employee with self-only coverage, $10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage), and

(II) in the case of an employee with coverage other than self-only coverage, $27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage).

(ii) Health cost adjustment percentage

For purposes of clause (i), the health cost adjustment percentage is equal to 100 percent plus the excess (if any) of—

(I) the percentage by which the per employee cost for providing coverage under the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for plan year 2018 (determined by using the benefit package for such coverage in 2010) exceeds such cost for plan year 2010, over

(II) 55 percent.

(iii) Age and gender adjustment

(I) In general

The amount determined under subclause (I) or (II) of clause (i), whichever is applicable, for any taxable period shall be increased by the amount determined under subclause (II).

(II) Amount determined

The amount determined under this subclause is an amount equal to the excess (if any) of—

(aa) the premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan for the type of coverage provided such individual in such taxable period if priced for the age and gender characteristics of all employees of the individual's employer, over

(bb) that premium cost for the provision of such coverage under such option in such taxable period if priced for the age and gender characteristics of the national workforce.

(iv) Exception for certain individuals

In the case of an individual who is a qualified retiree or who participates in a plan sponsored by an employer the majority of whose employees covered by the plan are engaged in a high-risk profession or employed to repair or install electrical or telecommunications lines—

(I) the dollar amount in clause (i)(I) shall be increased by $1,650, and

(II) the dollar amount in clause (i)(II) shall be increased by $3,450,[1]

(v) Subsequent years

In the case of any calendar year after 2018, each of the dollar amounts under clauses (i) (after the application of clause (ii)) and (iv) shall be increased to the amount equal to such amount as in effect for the calendar year preceding such year, increased by an amount equal to the product of—

(I) such amount as so in effect, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such year (determined by substituting the calendar year that is 2 years before such year for ''1992'' in subparagraph (B) thereof), increased by 1 percentage point in the case of determinations for calendar years beginning before 2020.

If any amount determined under this clause is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(c) Liability to pay tax

(1) In general

Each coverage provider shall pay the tax imposed by subsection (a) on its applicable share of the excess benefit with respect to an employee for any taxable period.

(2) Coverage provider

For purposes of this subsection, the term ''coverage provider'' means each of the following:

(A) Health insurance coverage

If the applicable employer-sponsored coverage consists of coverage under a group health plan which provides health insurance coverage, the health insurance issuer.

[1] So in original. The comma probably should be a period.

(B) HSA and MSA contributions

If the applicable employer-sponsored coverage consists of coverage under an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the employer.

(C) Other coverage

In the case of any other applicable employer-sponsored coverage, the person that administers the plan benefits.

(3) Applicable share

For purposes of this subsection, a coverage provider's applicable share of an excess benefit for any taxable period is the amount which bears the same ratio to the amount of such excess benefit as—

(A) the cost of the applicable employer-sponsored coverage provided by the provider to the employee during such period, bears to

(B) the aggregate cost of all applicable employer-sponsored coverage provided to the employee by all coverage providers during such period.

(4) Responsibility to calculate tax and applicable shares

(A) In general

Each employer shall—

(i) calculate for each taxable period the amount of the excess benefit subject to the tax imposed by subsection (a) and the applicable share of such excess benefit for each coverage provider, and

(ii) notify, at such time and in such manner as the Secretary may prescribe, the Secretary and each coverage provider of the amount so determined for the provider.

(B) Special rule for multiemployer plans

In the case of applicable employer-sponsored coverage made available to employees through a multiemployer plan (as defined in section 414(f)), the plan sponsor shall make the calculations, and provide the notice, required under subparagraph (A).

(d) Applicable employer-sponsored coverage; cost

For purposes of this section—

(1) Applicable employer-sponsored coverage

(A) In general

The term ''applicable employer-sponsored coverage'' means, with respect to any employee, coverage under any group health plan made available to the employee by an employer which is excludable from the employee's gross income under section 106, or would be so excludable if it were employer-provided coverage (within the meaning of such section 106).

(B) Exceptions

The term ''applicable employer-sponsored coverage'' shall not include—

(i) any coverage (whether through insurance or otherwise) described in section 9832(c)(1) (other than subparagraph (G) thereof) or for long-term care, or

(ii) any coverage under a separate policy, certificate, or contract of insurance which provides benefits substantially all of which are for treatment of the mouth (including any organ or structure within the mouth) or for treatment of the eye, or

(iii) any coverage described in section 9832(c)(3) the payment for which is not excludable from gross income and for which a deduction under section 162(*l*) is not allowable.

(C) Coverage includes employee paid portion

Coverage shall be treated as applicable employer-sponsored coverage without regard to whether the employer or employee pays for the coverage.

(D) Self-employed individual

In the case of an individual who is an employee within the meaning of section 401(c)(1), coverage under any group health plan providing health insurance coverage shall be treated as applicable employer-sponsored coverage if a deduction is allowable under section 162(*l*) with respect to all or any portion of the cost of the coverage.

(E) Governmental plans included

Applicable employer-sponsored coverage shall include coverage under any group health plan established and maintained primarily for its civilian employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any such government.

(2) Determination of cost

(A) In general

The cost of applicable employer-sponsored coverage shall be determined under rules similar to the rules of section 4980B(f)(4), except that in determining such cost, any portion of the cost of such coverage which is attributable to the tax imposed under this section shall not be taken into account and the amount of such cost shall be calculated separately for self-only coverage and other coverage. In the case of applicable employer-sponsored coverage which provides coverage to retired employees, the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries.

(B) Health FSAs

In the case of applicable employer-sponsored coverage consisting of coverage under a flexible spending arrangement (as defined in section 106(c)(2)), the cost of the coverage shall be equal to the sum of—

(i) the amount of employer contributions under any salary reduction election under the arrangement, plus

(ii) the amount determined under subparagraph (A) with respect to any reimbursement under the arrangement in excess of the contributions described in clause (i).

(C) Archer MSAs and HSAs

In the case of applicable employer-sponsored coverage consisting of coverage under

an arrangement under which the employer makes contributions described in subsection (b) or (d) of section 106, the cost of the coverage shall be equal to the amount of employer contributions under the arrangement.

(D) Allocation on a monthly basis

If cost is determined on other than a monthly basis, the cost shall be allocated to months in a taxable period on such basis as the Secretary may prescribe.

(3) Employee

The term ''employee'' includes any former employee, surviving spouse, or other primary insured individual.

(e) Penalty for failure to properly calculate excess benefit

(1) In general

If, for any taxable period, the tax imposed by subsection (a) exceeds the tax determined under such subsection with respect to the total excess benefit calculated by the employer or plan sponsor under subsection (c)(4)—

(A) each coverage provider shall pay the tax on its applicable share (determined in the same manner as under subsection (c)(4)) of the excess, but no penalty shall be imposed on the provider with respect to such amount, and

(B) the employer or plan sponsor shall, in addition to any tax imposed by subsection (a), pay a penalty in an amount equal to such excess, plus interest at the underpayment rate determined under section 6621 for the period beginning on the due date for the payment of tax imposed by subsection (a) to which the excess relates and ending on the date of payment of the penalty.

(2) Limitations on penalty

(A) Penalty not to apply where failure not discovered exercising reasonable diligence

No penalty shall be imposed by paragraph (1)(B) on any failure to properly calculate the excess benefit during any period for which it is established to the satisfaction of the Secretary that the employer or plan sponsor neither knew, nor exercising reasonable diligence would have known, that such failure existed.

(B) Penalty not to apply to failures corrected within 30 days

No penalty shall be imposed by paragraph (1)(B) on any such failure if—

(i) such failure was due to reasonable cause and not to willful neglect, and

(ii) such failure is corrected during the 30-day period beginning on the 1st date that the employer knew, or exercising reasonable diligence would have known, that such failure existed.

(C) Waiver by Secretary

In the case of any such failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by paragraph (1), to the extent that the payment of such penalty would be excessive or otherwise inequitable relative to the failure involved.

(f) Other definitions and special rules

For purposes of this section—

(1) Coverage determinations

(A) In general

Except as provided in subparagraph (B), an employee shall be treated as having self-only coverage with respect to any applicable employer-sponsored coverage of an employer.

(B) Minimum essential coverage

An employee shall be treated as having coverage other than self-only coverage only if the employee is enrolled in coverage other than self-only coverage in a group health plan which provides minimum essential coverage (as defined in section 5000A(f)) to the employee and at least one other beneficiary, and the benefits provided under such minimum essential coverage do not vary based on whether any individual covered under such coverage is the employee or another beneficiary.

(2) Qualified retiree

The term ''qualified retiree'' means any individual who—

(A) is receiving coverage by reason of being a retiree,

(B) has attained age 55, and

(C) is not entitled to benefits or eligible for enrollment under the Medicare program under title XVIII of the Social Security Act.

(3) Employees engaged in high-risk profession

The term ''employees engaged in a high-risk profession'' means law enforcement officers (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968), employees in fire protection activities (as such term is defined in section 3(y) of the Fair Labor Standards Act of 1938), individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders), individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof), and individuals engaged in the construction, mining, agriculture (not including food processing), forestry, and fishing industries. Such term includes an employee who is retired from a high-risk profession described in the preceding sentence, if such employee satisfied the requirements of such sentence for a period of not less than 20 years during the employee's employment.

(4) Group health plan

The term ''group health plan'' has the meaning given such term by section 5000(b)(1).

(5) Health insurance coverage; health insurance issuer

(A) Health insurance coverage

The term ''health insurance coverage'' has the meaning given such term by section 9832(b)(1) (applied without regard to subpara-

graph (B) thereof, except as provided by the Secretary in regulations).

(B) Health insurance issuer

The term ''health insurance issuer'' has the meaning given such term by section 9832(b)(2).

(6) Person that administers the plan benefits

The term ''person that administers the plan benefits'' shall include the plan sponsor if the plan sponsor administers benefits under the plan.

(7) Plan sponsor

The term ''plan sponsor'' has the meaning given such term in section 3(16)(B) of the Employee Retirement Income Security Act of 1974.

(8) Taxable period

The term ''taxable period'' means the calendar year or such shorter period as the Secretary may prescribe. The Secretary may have different taxable periods for employers of varying sizes.

(9) Aggregation rules

All employers treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as a single employer.

(10) Denial of deduction

For denial of a deduction for the tax imposed by this section, see section 275(a)(6).

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this section.

(Added and amended Pub. L. 111–148, title IX, §9001(a), title X, §10901(a), (b), Mar. 23, 2010, 124 Stat. 847, 1015, 1016; Pub. L. 111–152, title I, §1401(a), Mar. 30, 2010, 124 Stat. 1059.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (f)(3), is classified to section 3796b of Title 42, The Public Health and Welfare.

Section 3(y) of the Fair Labor Standards Act of 1938, referred to in subsec. (f)(3), is classified to section 203(y) of Title 29, Labor.

Section 3(16)(B) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(7), is classified to section 1002(16)(B) of Title 29, Labor.

AMENDMENTS

2010—Subsec. (b)(3)(B). Pub. L. 111–152, §1401(a)(1), designated existing provisions as cl. (i), inserted heading, substituted ''Except as provided in clause (ii), the annual'' for ''The annual'', and added cl. (ii).

Subsec. (b)(3)(C). Pub. L. 111–152, §1401(a)(2)(A), struck out introductory provisions which read: ''Except as provided in subparagraph (D)—''.

Subsec. (b)(3)(C)(i). Pub. L. 111–152, §1401(a)(2)(B)(i), substituted ''2018'' for ''2013'' in heading and introductory provisions.

Subsec. (b)(3)(C)(i)(I). Pub. L. 111–152, §1401(a)(2)(B)(ii), substituted ''$10,200 multiplied by the health cost adjustment percentage (determined by only taking into account self-only coverage)'' for ''$8,500''.

Subsec. (b)(3)(C)(i)(II). Pub. L. 111–152, §1401(a)(2)(B)(iii), substituted ''$27,500 multiplied by the health cost adjustment percentage (determined by only taking into account coverage other than self-only coverage)'' for ''$23,000''.

Subsec. (b)(3)(C)(ii), (iii). Pub. L. 111–152, §1401(a)(2)(C), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (b)(3)(C)(iv). Pub. L. 111–152, §1401(a)(2)(D), inserted ''covered by the plan'' after ''whose employees'' in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

''(I) the dollar amount in clause (i)(I) (determined after the application of subparagraph (D)) shall be increased by $1,350, and

''(II) the dollar amount in clause (i)(II) (determined after the application of subparagraph (D)) shall be increased by $3,000.''

Pub. L. 111–152, §1401(a)(2)(C), redesignated cl. (ii) as (iv).

Subsec. (b)(3)(C)(v). Pub. L. 111–152, §1401(a)(2)(E)(i), (ii), substituted ''2018'' for ''2013'' and ''clauses (i) (after the application of clause (ii)) and (iv)'' for ''clauses (i) and (ii)'' in introductory provisions.

Pub. L. 111–152, §1401(a)(2)(C), redesignated cl. (iii) as (v).

Subsec. (b)(3)(C)(v)(II). Pub. L. 111–152, §1401(a)(2)(E)(iii), inserted ''in the case of determinations for calendar years beginning before 2020'' after ''1 percentage point''.

Subsec. (b)(3)(D). Pub. L. 111–152, §1401(a)(3), struck out subpar. (D) which provided transition rule for States with highest coverage costs.

Subsec. (d)(1)(B)(i). Pub. L. 111–148, §10901(b), substituted ''section 9832(c)(1) (other than subparagraph (G) thereof)'' for ''section 9832(c)(1)(A)''.

Subsec. (d)(1)(B)(ii), (iii). Pub. L. 111–152, §1401(a)(4), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (d)(3). Pub. L. 111–152, §1401(a)(5), added par. (3).

Subsec. (f)(3). Pub. L. 111–148, §10901(a), inserted ''individuals whose primary work is longshore work (as defined in section 258(b) of the Immigration and Nationality Act (8 U.S.C. 1288(b)), determined without regard to paragraph (2) thereof),'' before ''and individuals engaged in the construction, mining''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–148, title X, §10901(c), Mar. 23, 2010, 124 Stat. 1016, as amended by Pub. L. 111–152, title I, §1401(b)(2), Mar. 30, 2010, 124 Stat. 1060, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE

Pub. L. 111–148, title IX, §9001(c), Mar. 23, 2010, 124 Stat. 853, as amended by Pub. L. 111–152, title I, §1401(b)(1), Mar. 30, 2010, 124 Stat. 1060, provided that: ''The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017.''

CHAPTER 44—QUALIFIED INVESTMENT ENTITIES

Sec.

AMENDMENTS

1986—Pub. L. 99–514, title VI, §651(c), Oct. 22, 1986, 100 Stat. 2297, substituted: ''QUALIFIED INVESTMENT ENTITIES'' for ''REAL ESTATE INVESTMENT TRUSTS'' as chapter heading, substituted ''Excise tax on undistributed income of real estate investment